

GAO

Report to Congressional Requesters

AD-A267 422



January 1991

# NATIONAL LABOR RELATIONS BOARD

## Action Needed to Improve Case- Processing Time at Headquarters



93-17183



69 pgs

## Human Resources Division

B-238479

January 7, 1991

The Honorable Tom Lantos  
Chairman, Subcommittee on Employment  
and Housing  
Committee on Government Operations  
House of Representatives

The Honorable Frank Horton  
Ranking Minority Member,  
Committee on Government Operations  
House of Representatives

Accession For	
NTIS	CRA&I <input checked="" type="checkbox"/>
DTIC	TAB <input type="checkbox"/>
Unannounced <input type="checkbox"/>	
Justification	
By	
Distribution /	
Availability Codes	
Dist	Avail and/or Special
A-1	

Concerned about the length of time the National Labor Relations Board (NLRB) has taken to decide some cases appealed to the five-member headquarters Board from the regions, you asked us to study the Board's system for deciding cases. Our objectives were to (1) describe how long the Board had taken to decide cases, particularly since 1984, and determine whether there were excessive delays; (2) identify factors that contributed to such delays; and (3) determine if additional administrative or legislative action might be warranted. We concentrated on activities at agency headquarters from the time the Executive Secretary assigns a case to a Board member to the time the Board issues its decision. For perspective, we also obtained selected information about NLRB regional activity, such as the number of cases that are resolved in the regions.

Cases generally reach the headquarters Board when parties contest decisions made by NLRB regional offices or an administrative law judge (ALJ). Cases involve either allegations of unfair labor practices by employers or unions (unfair labor practice cases) or disagreements about elections to determine whether employees wish to be represented by a union (representation cases).

To answer your questions about case processing at the headquarters Board, we (1) reviewed prior studies and published literature, including NLRB's annual appropriation justifications; (2) interviewed current and former Board members and staff attorneys; (3) reviewed data from NLRB files, including computerized data from its management information system; and (4) sent a questionnaire to staff attorneys at NLRB headquarters. We analyzed 20 cases selected judgmentally to illustrate delays in decisionmaking and 90 cases selected randomly from those with the longest and the shortest processing times during the most recent complete fiscal year (1989). We included only those cases that came to the Board after one of the parties appealed the decision of an NLRB regional

---

office or ALJ. Although you expressed concern about the case-processing delays in the early 1980s as well, we focused on 1984 through 1989 because the Board said its computer data base for earlier years was incomplete.

---

## Results in Brief

NLRB's 33 regional offices resolve the vast majority of cases within 1 year. About 5 percent of the cases—between 900 and 1,900 annually during the 1980s—are forwarded for review to the five-member Board at NLRB headquarters. In the 6-year period 1984 through 1989, the Board decided about 67 percent of the 5,000 cases appealed to it within 1 year from the date the case was assigned to a Board member. However, about 10 percent of the cases took from over 3 to more than 7 years to decide.

We compared Board case-processing times with two criteria for excessive delays: (1) median processing times before 1984 and (2) a "more-than-2-years" timeframe that former Board chairpersons identified as an unreasonable length of time to decide any case. We found that the 1984 through 1989 median case-processing times were generally the highest in the Board's history (except for such times for representation cases, which were higher during the 1981 through 1983 period). We also found that 17 percent (823 cases) of all cases appealed took more than 2 years to be decided by the Board from 1984 through 1989.

By both criteria, the Board's record in 1989 was better than in 1988.

Our analyses suggest that three factors primarily contributed to these delays: (1) lack of standards and procedures to prevent excessive delays, (2) lack of timely decisions on major-issue cases that delayed related cases, and (3) Board-member turnover and vacancies.

---

## Background

The National Labor Relations Act (NLRA) of 1935, as amended, provides the basic framework governing labor-management relations in the private sector. The act created NLRB to administer and enforce the act. The Board's two statutory missions are to (1) prevent and remedy unfair labor practices by employers or unions and (2) conduct elections to determine whether employees wish to be represented by a union. NLRB's functions are divided between its General Counsel and a five-member Board. The President, with the consent of the Senate, appoints Board members for 5-year terms and the General Counsel for a 4-year term.

---

When a Board member's term ends, the position is vacant until a replacement has been nominated and confirmed. In contrast, some other federal agencies operate under laws that allow a member whose term at the agency is ending to either remain for a fixed period of time or continue until a replacement has been confirmed and is at the agency. Examples include the Equal Employment Opportunity Commission, the Federal Communications Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission.

NLRB's General Counsel has responsibility for the activities of the 33 regional offices. These include,

- for unfair labor practice cases, investigating and prosecuting complaints before regional ALJs and
- for representation cases, conducting elections and investigations and holding hearings to resolve disagreements about elections.

Most cases are resolved in the regions, where all cases originate. In fiscal year 1988, the regions resolved more than 95 percent of the cases. Most unfair labor practice cases were resolved in the regions without the case reaching a hearing before an ALJ; one-half of these were disposed of informally in 50 days or less. The median time to obtain a decision when unfair labor practice cases were litigated before an ALJ was about 1 year. Representation cases generally were resolved more quickly than unfair labor practice cases.

If the regional decision is contested, the case is sent to the headquarters five-member Board for review. The Board decides to affirm, modify, or reverse the regional decision.<sup>1</sup> In 1989, less than 5 percent of all cases came to the headquarters Board; about 75 percent of these were unfair labor practice cases. The number of cases appealed to the Board has declined steadily since 1980, roughly paralleling a decline in cases originating in the regions. In fiscal year 1989, 874 cases were assigned to Board members, compared with 1,875 in 1980.

Most cases are decided at the Board by three-member panels rather than the full five-member Board. After assignment to a Board member, both unfair labor practice and representation cases proceed through three

---

<sup>1</sup>In addition to reviewing regional decisions, the Board decides some cases that do not involve questions of fact and have not involved a regional hearing.

---

stages—analysis and research (Stage I), drafting (Stage II), and circulation (Stage III)—before the Board issues its decisions. The Board has established expected time targets for progress of cases through these stages and procedures for tracking case progress.

In general, representation cases cannot be appealed, but Board decisions on unfair labor practice cases can be appealed to U.S. circuit courts of appeals and may, in turn, be appealed to the Supreme Court. About 13 percent of all Board decisions issued in fiscal year 1989 were appealed to U.S. circuit courts.

---

## Principal Findings

---

### Median Case-Processing Times Increased

The Board does not publish data about median processing times from date of assignment to date of decision. However, the Board does report median times from the date regional action—either an ALJ decision or regional hearing—is completed to the date of a Board decision.<sup>2</sup> Those data show that 1984 through 1989 medians were among the highest in Board history.

Between 1984 and 1989, the medians for unfair labor practice cases ranged from a low of 273 days to a high of 395 days—between two and three times higher than medians during the 1970s. Only one previous year had a median as high (324 days in 1983). For representation cases, the medians ranged from 190 to 256 days—also higher than medians during the 1970s. Only the 3 years immediately preceding had representation case medians as high as those during the 1984 through 1989 period (209, 313, and 250 days in 1981, 1982, and 1983, respectively).

---

### Some Cases Took More Than 2 Years to Decide

According to six previous Board chairpersons, all cases should be decided within 2 years. During the 1984 through 1989 period, the Board took more than 2 years to decide over 750 (19 percent) of its unfair labor practice cases and 70 (7 percent) of its representation cases. The percent of unfair labor practice cases taking more than 2 years ranged

---

<sup>2</sup>Includes approximately 60 days for parties to file documents regarding their appeal of the regional action.

---

from 8 percent in fiscal 1984 to 30 percent in fiscal 1988. Representation cases taking more than 2 years ranged from 2 percent in fiscal year 1984 to 13 percent in fiscal year 1987.

---

---

**Timeliness Improved in 1989 but Further Improvement Needed**

The timeliness of Board decisionmaking has improved. Both the median number of days to decide cases and the number of cases at the Board for more than 2 years were lower in fiscal year 1989 than in 1988. In addition, the number of cases undecided at the end of 1989 was lower than in any year of the decade. The Board Chairman attributes this improvement, at least in part, to actions taken at the Board to expedite certain types of cases and focus on deciding the oldest cases.

Despite such progress, cases decided in fiscal year 1989 still showed excessive delays. For example, the median time to decide unfair labor practice cases in fiscal 1989 (300 days) was substantially higher than at the start of the decade (133 days in 1980). Also, 21 percent of the unfair labor practice cases decided in fiscal year 1989 had been at headquarters more than 2 years.

---

**Several Factors Contributed to Delays**

Our analyses of the Board's system for deciding cases identified several factors that explain in part why there have been decision-making delays.

**Lack of Standards and Procedures to Prevent Excessive Delays**

The Board has no standard for (1) the total length of time it considers acceptable for a contested case to be at the Board or (2) the length of time a case can remain in each decision stage before corrective action is required. In the absence of such standards, its monitoring procedures do not require Board members or their staffs to focus proactively on cases most likely to show excessive delays unless corrective action is taken.

The Board does monitor the progress of cases through each stage, but it primarily uses as targets the expected times in which typical cases are likely to move through each stage. When the expected targets for all three stages are combined, they total about 2 months. This 2-month period has limited value in focusing attention on cases most in need of corrective action to avoid an inordinate delay. In fact, in fiscal year 1989, about 90 percent of all cases were at the Board longer than 2 months before a decision was issued.

## Lack of Timely Decisions on Lead Cases Delays Related Cases

When several undecided cases deal with the same issue, the Board selects one case to serve as the principal or lead case and suspends further processing on all related cases—it “ices” them—until the lead case is decided. The lack of timely decisions on lead cases delays all related cases. Our analysis of a random sample of 45 of the lengthiest cases decided during fiscal 1989 disclosed that delay attributable to waiting for lead case decisions was a major factor in at least 13 (29 percent) of these cases. In contrast, none of the 45 shortest cases had been delayed for a lead case.

Our review of 20 other judgmentally selected lengthy cases also determined that lead cases had caused delays in 13 of the cases. Eight cases had been delayed more than once during their case processing by different lead cases; that is, they were initially delayed by one lead case, then later delayed by another lead case. Four cases had been delayed three different times during their processing by different lead cases. Of 21 lead cases that delayed the 13 cases, 19 either took more than 2 years to decide or had been pending for more than 2 years at the end of fiscal year 1989. Such situations illustrate the need for timely decisions on lead cases in particular, due to their potential spillover effect of delaying related cases.

## Board-Member Turnover and Vacancies

Board-member turnover and vacancies from 1980 through 1984 contributed to a backlog of pending cases at the start of the 1984 through 1989 period.<sup>3</sup> In addition, Board-member turnover and vacancies during the 6-year period continued to affect case processing even after the backlog was no longer a problem.

Board-member turnover from 1980 to 1984 was the highest in the Board's history. The Board had as many new members (six) during that time as it had during the 1970s and more than it had during the 1960s. Five Board members—with over 60 years cumulative experience as members—were replaced during fiscal years 1980 to 1983. One newly appointed member served less than 17 months, another served less than 3 months. Turnover continued from 1985 to 1989, when six new members replaced others who were appointed from 1980 to 1984.

<sup>3</sup>Cases pending at fiscal year end increased from less than 500 in 1980 to over 1,300 in 1983 and 1984—more than twice as many as were pending at year end during the period 1973 to 1979. As a result, the Board's total caseload—the combination of undecided cases from prior years plus new cases assigned during the year—remained high during the 1980 to 1984 period, even though fewer new cases were coming to the Board.

Turnover contributes to delayed decisions because departing members' undecided cases are added to remaining members' caseloads, and some cases in the final decision stage are recycled to earlier decision stages. Likewise, new members require time to hire senior staff and become familiar with the issues in cases they inherit.

Vacancies, which contributed to case backlogs from 1980 to 1984, continued to affect decisionmaking in 1985 through 1989. During both 5-year periods, the Board had fewer than five members for a total of 3 out of 5 years. Likewise, each 5-year period had a total of 8 months in which the Board had only three members. Vacancies increase the workload for other members and cause some cases—major cases the Board believes should have all five members voting—to be delayed.

## Conclusions

During the 1984 to 1989 period, NLRB's headquarters median case-processing times were among the highest in Board history, and the Board took more than 2 years to decide 17 percent (823 cases) of the cases appealed to it from the regions. Factors that contributed to delays include (1) lack of standards and procedures to prevent excessive delays, (2) lack of timely decisions on lead cases, and (3) Board-member turnover and vacancies. Even though timeliness improved in 1989, reduced delays were probably due not only to specific actions of the Board, such as focusing on the oldest cases, but also to a reduction in the number of cases coming to the Board. We believe additional Board actions are needed to further improve case-processing timeliness and reduce inordinate delays in deciding cases at the five-member Board.

## Recommendations

We recommend that the Chairman of the National Labor Relations Board (1) establish standards for the total length of time a case should be at the Board and a time for each decision stage that, when exceeded, requires corrective action and (2) specify the corrective actions that Board members and staff should take when those targets are exceeded. Such action could range from more extensive Board-member involvement in addressing delays during the first two decision stages to more frequent use of the existing policy option of issuing decisions without waiting for untimely written dissents during the final decision stage.



---

## Matter for Congressional Consideration

To help reduce the problem of Board-member turnover and vacancies, the Congress may wish to provide for more continuity of members. The Congress could amend the NLRA to include provisions similar to those applicable to other agencies, such as the Equal Employment Opportunity Commission, that would allow Board members whose terms are ending to either stay at the Board until their replacement has been confirmed or continue for a limited period while a replacement is being sought.

---

## Agency Comments

The Board provided written comments on a draft of this report that appear in appendix VII. The Board commended GAO for providing important insights into the Board's decision-making process and generally concurred with our recommendations. The Board said that it was adding a new component to its case-management system that would identify for corrective action by all Board members any case that takes longer than 6 months in any of the three decision stages and that it was developing procedures and corrective actions for implementing this new system in each decision stage. The Board also said that incorporating an outside limit of 2 years for issuing a decision is a useful benchmark and that it was taking action toward the goal of having no cases at the Board more than 2 years.

---

We are sending copies of this report to the Chairman of the National Labor Relations Board and other interested parties. If you have any questions concerning this report, please call me at (202) 275-1793. Other major contributors to this report are listed in appendix VIII.



Franklin Frazier  
Director, Education  
and Employment Issues



---

# Contents

---

Letter		1
--------	--	---

---

Appendix I		14
National Labor	Background	14
Relations Board:	Objectives, Scope, and Methodology	18
Action Needed to	Case-Processing Delays, 1984 to 1989	19
Improve Case-	Factors That Caused or Contributed to Excessive Delay	25
Processing Time at	Further Actions Needed to Improve Case Processing	32
Headquarters	Recommendations	32
	Matter for Congressional Consideration	33
	Agency Comments	33

---

Appendix II		34
Methodology	Determining Case-Processing Times	34
	Determining "Inordinate Delay"	34
	Identifying Factors Contributing to Delays	35
	Assessing the Need for Additional Administrative or Legislative Action	37

---

Appendix III		38
Overview: How the Five-Member Board Decides Cases		

---

Appendix IV		42
Headquarters Case Monitoring		

---

Appendix V		44
Examples of Delays in	Case 1	45
Selected Cases That	Case 2	47
Took More Than 2	Case 3	49
Years to Decide	Case 4	52
	Case 5	54
	Case 6	57
	Case 7	59

Appendix VI Data Points for Figures	63
Appendix VII Comments From the National Labor Relations Board	65
Appendix VIII Major Contributors to This Report	68
Glossary	69
Related GAO Products	72
Tables	
Table I.1: Cases Received in Regions and Cases Assigned to the Five-Member Board (Fiscal Years 1973-89)	16
Table I.2: Contested Cases Closed, by Timeframe (Fiscal Years 1984-89)	21
Table I.3: Cases More Than 2 Years Old When Closed, as a Percent of Total Cases of Each Type Closed (Fiscal Years 1984-89)	23
Table I.4: Cases More Than 2 Years Old Pending at Year End, as a Percent of Total Cases of Each Type Pending (Fiscal Years 1984- 89)	23
Table I.5: Length of Time Contested Cases Had Been at the Five-Member Board Before Decision Was Issued (Fiscal Years 1984-89)	24
Table I.6: Median Days From Case Assignment to Board Decision for Contested Cases (Fiscal Years 1984-89)	24
Table I.7: Total Caseload, Cases Assigned, Cases Decided, and Cases Pending at Year End (Fiscal Years 1980- 89)	31
Table V.1: Factors Responsible for Delays in Selected Cases	45

---

## Contents

---

Table VI.1: Data for Figure I.1, Median Time to Decide Contested Cases (Fiscal Years 1960-89)	63
Table VI.2: Data for Figure I.3, Cases Assigned During Year and Cases Pending at Year End (Fiscal Years 1973-89)	64

---

## Figures

Figure I.1: Median Time to Decide Contested Cases (Fiscal Years 1960-89)	22
Figure I.2: NLRB Board-Member Tenure During the 1980s	28
Figure I.3: Cases Assigned During Year and Cases Pending at Year End (Fiscal Years 1973-89)	31
Figure III.1: How the Five-Member Board Decides Cases	39

---

## Abbreviations

ALJ	administrative law judge
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board



# National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters

## Background

The National Labor Relations Act of 1935, as amended (29 U.S.C. 141), created the National Labor Relations Board (NLRB) as an independent federal agency. The act governs relations between labor and business enterprises engaged in interstate commerce. It defines and protects the rights of employees and employers, encourages collective bargaining, and seeks to eliminate certain unfair labor practices on the part of labor and management that could cause commerce interruptions.

The NLRB's two principal functions are to (1) prevent and remedy unfair labor practices by employers or unions and (2) conduct secret ballot elections to determine whether employees want to be represented by a union. The agency performs electoral, investigative, prosecutorial, and judicial functions that are divided between its General Counsel and a five-member Board. The President, with the consent of the Senate, appoints the General Counsel for a 4-year term and Board members for 5-year terms. The President also appoints one of the members as Board Chairman.

When a Board member's term ends, that position is vacant until a replacement has been nominated and confirmed. In contrast, some other federal agencies operate under laws that allow a member whose term at the agency is ending to either (1) remain for a fixed period of time or (2) continue until a replacement has been confirmed. Examples include the Equal Employment Opportunity Commission, the Federal Communications Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission.

The Board processes two kinds of cases: unfair labor practice cases that involve alleged violations of section 8 of the act and representation cases that involve elections authorized by section 9 of the act. All cases originate in one of NLRB's 33 regional offices, either with a party filing a charge alleging an unfair labor practice or with a party filing a petition for an election. At the regional office level, parties to the case either settle matters informally or undertake litigation. Litigation in unfair labor practice cases usually involves a hearing before an administrative law judge (ALJ) who decides the case. Litigation in representation cases usually involves a hearing before a hearing officer, followed by a regional director's decision. If parties to the case concur with the ALJ or regional director decision, those decisions become the NLRB decision.

If parties contest the regional decision, the five-member Board at NLRB headquarters reviews the case and decides to affirm, modify, or reverse the regional decision. The Board also decides some cases from the

regions that do not involve questions of fact and have not involved regional hearings.

About 75 percent of all cases decided by the Board are unfair labor practice cases; the remaining 25 percent are representation cases. During fiscal year 1989, the Board received 637 unfair labor practice and 237 representation cases, and issued 1,038 total decisions (750 unfair labor practice and 288 representation decisions), including decisions on cases received in prior years.

Parties (except for the General Counsel) who disagree with the Board's decision may appeal unfair labor practice cases, but generally not representation cases, to a U.S. circuit court of appeals. The number of cases (139) appealed to circuit courts in fiscal year 1989 was about 13 percent of the Board decisions issued in fiscal year 1989. Appeals courts may either uphold or reverse the Board's decision or remand the case to the Board for reconsideration. Parties may appeal circuit court decisions to the U.S. Supreme Court.

Timely Board decisions are important for several reasons: (1) prompt resolution of labor disputes contributes to the national economy by reducing labor-management strife in the private sector; (2) delayed decisions can cause economic and personal losses to employers and employees; and (3) appeals courts may choose not to enforce Board decisions if excessive delay occurs (a situation that happened in 1990).

In fiscal year 1989, NLRB, with a budget of about \$140 million and 2,273 full-time-equivalent positions in its Washington headquarters and field offices, processed 8,535 election petitions and 31,988 unfair labor practice cases.

---

## **Regions Resolve Most Cases**

More than 95 percent of all cases filed with NLRB are resolved at the regional office level without the case going to the five-member Board for a decision. (See table I.1.) For example, in fiscal year 1988, NLRB's regional offices closed 96 percent of the 31,453 unfair labor practice cases filed. Most of these cases were resolved informally without litigation before an ALJ and one-half of such cases were resolved in about 50 days or less. The median time to obtain a decision when unfair labor



**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

practice cases were litigated before an ALJ was about 11 months.<sup>1</sup> In general, representation cases were resolved more quickly than unfair labor practice cases.

**Table I.1: Cases Received in Regions and Cases Assigned to the Five-Member Board (Fiscal Years 1973-89)**

<b>Fiscal year</b>	<b>Regional cases received</b>	<b>Regional cases assigned to the Board</b>
1973	40,519	1,489
1974	41,808	1,395
1975	44,336	1,625
1976	48,698	1,597
1977	52,186	1,684
1978	52,554	1,676
1979	54,164	1,856
1980	56,463	1,875
1981	55,111	1,858
1982	46,373	1,490
1983	48,712	1,349
1984	43,375	1,289
1985	40,569	1,090
1986	41,731	923
1987	39,037	881
1988	38,801	872
1989	40,108	874

As table I.1 shows, the number of cases assigned to the five-member Board increased from fiscal year 1973 to fiscal year 1980, but decreased steadily thereafter. This trend roughly paralleled the change in the number of cases filed with the regional offices, although the number of cases going to the Board for a decision declined more sharply in the 1980s than did the number received in the regions.

**General Counsel and Board-Member Functions**

NLRB's General Counsel investigates charges and prosecutes unfair labor practice complaints before ALJs. The General Counsel has general supervision over about 2,000 attorneys, examiners, and clerical staff in 33 regional and 19 subregional and resident offices. The General Counsel also monitors case-processing timeliness in the regions.

<sup>1</sup>The median indicates that one-half the cases were decided in that number of days or fewer and one-half decided in that number of days or more.

---

**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

---

The five-member Board with headquarters staff reviews cases contested in the regions, either unfair labor practice cases (ALJ decisions) or representation cases (regional director decisions), and cases that come from the regions without hearings. The Board also issues decisions and orders to remedy violations of the act. The Solicitor and staff serve as legal advisers and consultants to the Board. An Executive Secretary is the Board's chief administrative officer, principally concerned with administrative management of the Board's caseload. The Executive Secretary monitors case-processing timeliness for the Board. Each Board member has a professional staff of about 20 attorneys.

To decide cases, the Board uses a three-step process: (1) analysis and research, (2) drafting a decision, and (3) circulating the draft decision.<sup>2</sup> The Board refers to these steps as Stages I, II, and III. In Stage I, a preliminary decision is reached on whether to accept, modify, or reject the regional decision (or on cases that have not involved a regional hearing). In Stage II, Board staff draft the proposed Board decision. In Stage III, the draft decision circulates to the Board members who approve, modify, or dissent to the proposed decision. The Board has established expected time targets for progress of cases through these stages and procedures for tracking case progress. The Executive Secretary publishes issued decisions.

The Board organizes itself for decision-making purposes into five panels. Each panel consists of three Board members. One Board member serves as the head of each panel and is referred to as the "originating" member for the case; that is, the member to whom the case is assigned and who is responsible for drafting the Board's decision. The other two members of each panel are referred to as "participating" members in the case. (Each Board member is, therefore, the originating member on one panel and a participating member on two other panels.) Although all Board members receive copies of the circulating draft decision, those members not on the panel that reached the preliminary decision are referred to as nonparticipating members in the decision.

Most Board decisions are made by the three-member panels rather than by all five members. In fiscal year 1989, for example, the Board issued 1,038 contested case decisions—1,022 decided by panels and 16 decided by the full Board.

---

<sup>2</sup>This process is described in more detail in appendix III.

## Objectives, Scope, and Methodology

The Chairman and the Ranking Minority Member of the Subcommittee on Employment and Housing, House Committee on Government Operations, asked us to analyze the system that NLRB headquarters uses to process and decide cases. Before its request, the Subcommittee had held annual oversight hearings from 1983 to 1988 on NLRB case-processing delays. The Committee issued a 1984 report that made several recommendations to reduce headquarters delay, including the need for specific timetables for deciding cases.<sup>3</sup>

The objectives of our review were to (1) describe how long the Board had taken to decide cases, particularly since 1984, and determine whether there were inordinate delays; (2) identify factors that contributed to such delays; and (3) determine if additional administrative or legislative action might be warranted. In discussing the scope of our review with the requesters, we agreed to focus on case-processing events and procedures and avoid discussing or analyzing the substantive issues involved in cases.

We concentrated on those activities that take place at agency headquarters from the time the Executive Secretary assigns a case to a Board member to the time the Board issues its decision. In some cases we obtained information about events before Board-member review.

To describe how long the Board was taking to decide cases and the appropriateness of that length of time, we analyzed data from the Board's computerized management-information-system data base and its published annual appropriations justifications reports.<sup>4</sup> We used two criteria to determine whether case-processing times were excessive: median processing times in previous years (1960 through 1983) and a maximum time of 2 years, which former Board chairpersons agreed is a reasonable length of time to decide any case. We used NLRB's computerized data base to calculate case-processing times for the period (fiscal years 1984-89) we reviewed. Board officials told us the data base for prior years was incomplete.

To identify factors that contributed to excessive delay, we used a combination of (1) analyses of the Board's computerized data base; (2) a random sample of 90 cases closed—45 of the lengthiest times and 45 of

<sup>3</sup>Committee on Government Operations, U.S. House of Representatives, Delay, Slowness in Decision-making, and the Case Backlog at the National Labor Relations Board. Washington, DC: U.S. Government Printing Office, 1984.

<sup>4</sup>In these and other calculations, we excluded cases forwarded from the regions without hearings.

the shortest times—during the most recent fiscal year (1989); (3) a judgmental sample of 20 cases that (with one exception) took more than 2 years to decide or were still pending after 2 years; (4) data collection instruments for Board staff, members, and the Executive Secretary's office; (5) interviews with researchers who had studied NLRB case processing and decisionmaking; and (6) interviews with six former Board members who had served as chairpersons from 1960 to 1986.

To determine if additional administrative or legislative action might be warranted, we reviewed the status of the agency's progress in reducing case-processing times since 1984, including procedures implemented to prevent excessive delays, and examined legislative proposals made since 1961 to improve NLRB decision-making timeliness.

Appendix II contains additional details of our methodology. We also provide a glossary of terms associated with selected aspects of the Board's decision-making process.

We conducted our review between January 1989 and June 1990 in accordance with generally accepted government auditing standards. We used various automated data checks to perform a limited reliability assessment of the Executive Secretary's data base. NLRB corrected errors identified by these tests and provided us with an updated file. We also compared the annual median case-processing times we calculated from the Executive Secretary's data base for the period 1984 through 1989 with the medians reported in the Board's annual appropriations justifications. We found no material differences between our calculations and agency-reported data. Based on such tests, we concluded the Executive Secretary's data base was sufficiently reliable to be used in meeting the assignment's objectives.

The Board provided written comments on a draft of this report. These comments are presented and evaluated in this appendix and are included in appendix VII.

---

## **Case-Processing Delays, 1984 to 1989**

From 1984 to 1989, the Board decided a majority—67 percent—of 5,000 cases appealed to it within 1 year. However, 10 percent of these cases took from over 3 to more than 7 years to decide. Compared with case-processing performance in prior years, we found that median case-processing times from 1984 through 1989 were generally the highest in

---

**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

---

the Board's history. Compared against a criterion of 2 years as a reasonable period in which to decide any case, the Board took more than 2 years to decide 17 percent (823 cases) of the cases appealed to it.

The Board's 1989 case-processing times and the age of cases pending at year end were generally better than in 1988 and, by some indicators, were the lowest since 1984. Despite such progress, 21 percent of the unfair labor practice cases decided during fiscal year 1989 had been at the Board more than 2 years.

---

**Processing Time From**  
**Case Assignment to Board**  
**Decision**

From 1984 to 1989, Board members decided about 5,000 contested cases.<sup>5</sup> Our analysis describes processing times for those cases in terms of the length of time they had been at the Board (from date assigned to a Board member to date the Board decision was issued).<sup>6</sup>

The Board decided the majority of cases from 1984 to 1989 in 1 year or less. (See table I.2.) Unfair labor practice cases were twice as likely as representation cases to take more than 1 year to decide. Of the 1,639 cases that took more than 1 year, 1,448 were unfair labor practice cases, or 37 percent of all unfair labor practice case decisions, compared with 191 representation cases, or 18 percent of all representation case decisions.

---

<sup>5</sup>We excluded from discussion and all subsequent analyses about 1,700 cases that did not involve regional hearings.

<sup>6</sup>In contrast, the Board publishes (in annual reports and appropriations justifications to Congress) statistics on the median days elapsed between numerous milestones in processing cases, from filing a charge in the region through issuing a decision, but it does not report case-processing times between assignment to a Board member and case issuance. It does report median times from regional action to Board decision, but publishes no description of the ages of closed cases that took longer than the median.

**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

**Table I.2: Contested Cases Closed, by**  
**Timeframe** (Fiscal Years 1984-89)

Timeframe (years)	Unfair labor practice		Representation		Total	
	No.	Pct.	No.	Pct.	No.	Pct.
1 or less	2,419	63	884	82	3,303	67
Over 1 to 2	696	16	120	11	816	17
Over 2 to 3	295	8	34	3	329	7
Over 3 to 4	200	5	19	2	219	4
Over 4 to 5	107	3	9	1	116	2
Over 5 to 6	96	2	5	1	101	2
Over 6 to 7	44	1	3	0	47	1
Over 7	10	0	1	0	11	0
<b>Total</b>	<b>3,867</b>	<b>100</b>	<b>1,075</b>	<b>100</b>	<b>4,942</b>	<b>100</b>

The median processing times for the 5,000 closed cases also show unfair labor practice cases taking longer than representation cases. For all cases over the 6-year period, the median time for deciding contested unfair labor practice cases after assignment to a Board member was 244 days; for representation cases the median was 130 days.

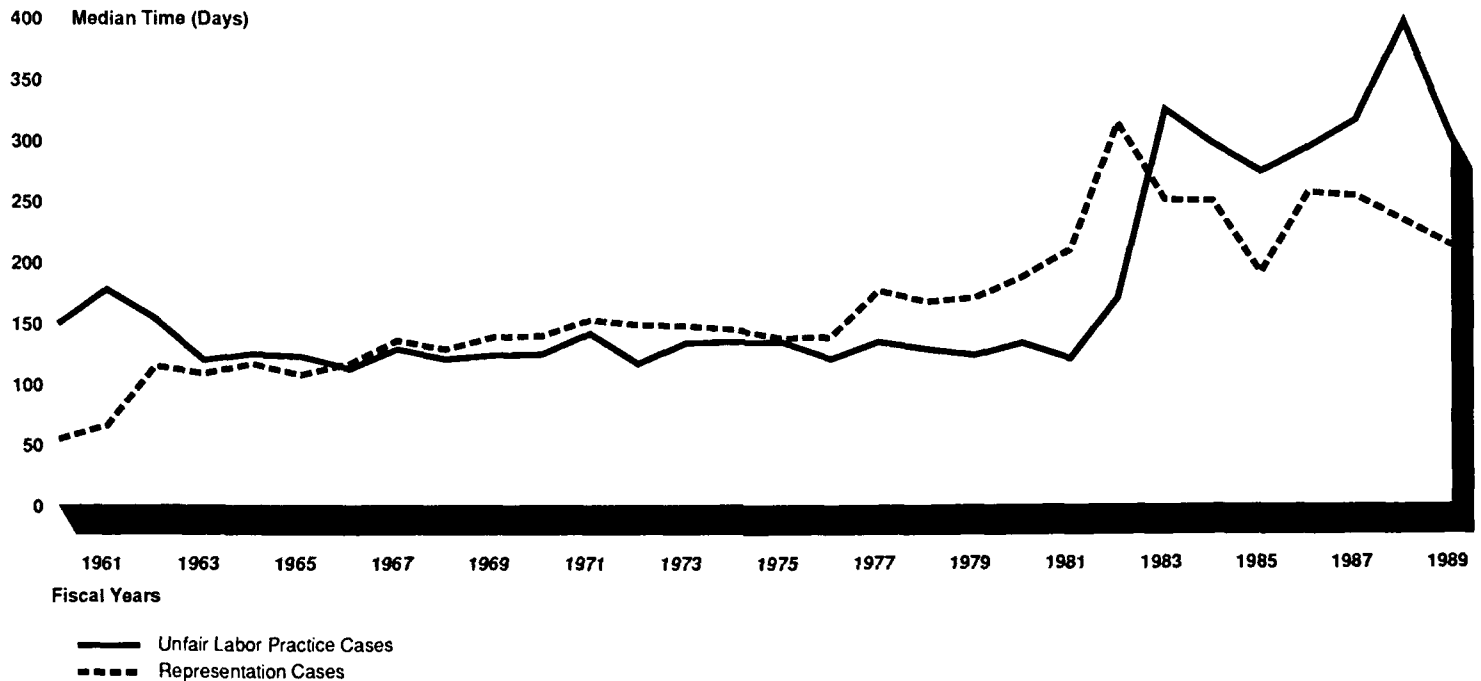
**Historical Comparison:**  
**Increased Time From**  
**Regional Action to Board**  
**Decision**

NLRB's annual appropriation justifications show that, after contested cases left the regions, the Board's median case-processing times for 1984 through 1989 were among the highest in Board history. Figure I.1 shows, since 1960, how much time passed between the date of regional action and the date of Board decision, expressed in median days.<sup>7</sup> Between 1984 and 1989, the medians for unfair labor practice cases ranged from a low of 273 days to a high of 395 days—between two and three times higher than medians during the 1970s. Only one previous year had a median as high (324 days in 1983). For representation cases, the medians ranged from 190 days to 256 days—also higher than medians during the 1970s. Only the 3 years immediately preceding had representation case medians as high as those from 1984 through 1989 (209, 313, and 250 days in 1981, 1982, and 1983, respectively).

<sup>7</sup>Regional action is either an ALJ decision (in unfair labor practice cases) or the close of a hearing (in representation cases).

Appendix I  
National Labor Relations Board: Action  
Needed to Improve Case-Processing Time  
at Headquarters

Figure I.1: Median Time to Decide Contested Cases (Fiscal Years 1960-89)



Note: Median days reported from date of regional action (ALJ decision or close of regional hearing) to date of Board decision.

### Some Cases Took Inordinate Amounts of Time

Former Board chairpersons we interviewed generally agreed that any period of time longer than 2 years to decide a case could be considered inordinate. If more than 2 years is used as a criterion, the Board took an inordinate time to decide over 820 cases—17 percent of all closed cases—during fiscal years 1984 through 1989. This included over 750 unfair labor practice cases, or 19 percent of such cases closed, and over 70 representation cases, or 7 percent of all such cases closed. (See table I.3.)

**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

**Table I.3: Cases More Than 2 Years Old When Closed, as a Percent of Total Cases of Each Type Closed** (Fiscal Years 1984-89)

Fiscal year	Unfair labor practice		Representation		Total	
	No.	Pct.	No.	Pct.	No.	Pct.
1984	63	8	4	2	67	7
1985	101	14	9	4	110	11
1986	140	21	21	10	161	18
1987	158	27	16	13	174	25
1988	169	30	18	12	187	26
1989	121	21	3	2	124	18
<b>Total</b>	<b>752</b>	<b>19</b>	<b>71</b>	<b>7</b>	<b>823</b>	<b>17</b>

In addition, between 16 and 43 percent of the cases pending at the end of fiscal years 1984 through 1989 had been at the Board for more than 2 years. (See table I.4.)

**Table I.4: Cases More Than 2 Years Old Pending at Year End, as a Percent of Total Cases of Each Type Pending** (Fiscal Years 1984-89)

Fiscal year	Unfair labor practice		Representation		Total	
	No.	Pct.	No.	Pct.	No.	Pct.
1984	205	22	18	12	223	21
1985	293	36	28	20	321	34
1986	289	40	23	31	312	43
1987	224	40	17	22	241	37
1988	121	27	3	6	124	25
1989	51	16	9	17	60	16

## Improvement in Case-Processing Times in Fiscal Year 1989

Case-processing times during 1989 and the age of cases pending at the end of fiscal year 1989 were generally better compared with 1988, and by some indicators were the lowest since 1984. The percentage of unfair labor practice cases closed in 1 year or less was the highest since 1985 and the percentage of representation cases closed in 1 year or less was the highest of the period 1984 through 1989. Likewise, the percentage of both unfair labor practice and representation cases taking very long periods of time (such as over 4 years) decreased from the 1988 peaks. (See table I.5.) Median days to decide both unfair labor practice cases and representation cases were the lowest since 1985, as table I.6 shows.



**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

**Table I.5: Length of Time Contested Cases Had Been at the Five-Member Board Before Decision Was Issued**  
(Fiscal Years 1984-89)

Fiscal year	Years at the Board <sup>a</sup>					Total cases
	1 or Less	Over 1 to 2	Over 2 to 3	Over 3 to 4	Over 4	
<b>Unfair labor practice</b>						
1984	520	174	41	18	4	<b>757</b>
	(69)	(23)	(5)	(2)	(1)	<b>(100)</b>
1985	475	154	63	29	9	<b>730</b>
	(65)	(21)	(9)	(4)	(1)	<b>(100)</b>
1986	409	123	66	47	27	<b>672</b>
	(61)	(18)	(10)	(7)	(4)	<b>(100)</b>
1987	352	66	39	44	75	<b>576</b>
	(61)	(12)	(7)	(8)	(13)	<b>(100)</b>
1988	297	94	50	35	84	<b>560</b>
	(53)	(17)	(9)	(6)	(15)	<b>(100)</b>
1989	366	85	36	27	58	<b>572</b>
	(64)	(15)	(6)	(5)	(10)	<b>(100)</b>
<b>Representation</b>						
1984	199	34	4	0	0	<b>237</b>
	(84)	(14)	(2)	(0)	(0)	<b>(100)</b>
1985	188	29	7	0	2	<b>226</b>
	(83)	(13)	(3)	(0)	(1)	<b>(100)</b>
1986	169	27	11	8	2	<b>217</b>
	(78)	(12)	(5)	(4)	(1)	<b>(100)</b>
1987	97	8	4	6	6	<b>121</b>
	(80)	(7)	(3)	(5)	(5)	<b>(100)</b>
1988	127	6	5	5	8	<b>151</b>
	(84)	(4)	(3)	(3)	(5)	<b>(100)</b>
1989	104	16	3	0	0	<b>123</b>
	(85)	(13)	(2)	(0)	(0)	<b>(100)</b>

<sup>a</sup>Figures are number of cases and (in parentheses) percentage of cases in that year. Totals may not add to 100 due to rounding.

**Table I.6: Median Days From Case Assignment to Board Decision for Contested Cases** (Fiscal Years 1984-89)

Fiscal year	Unfair labor practice	Representation
1984	244	140
1985	207	114
1986	239	152
1987	252	132
1988	329	149
1989	237	121

As shown in tables I.3 and I.4, the Board also continued to make progress in reducing the number and proportion of cases taking more than 2 years to decide and cases pending more than 2 years at year end. In 1989, the number and percentage of total cases closed in more than 2 years was the lowest since 1985 at the same time that the number and percentage of total cases pending more than 2 years dropped to the lowest levels since 1984.

The Board Chairman believes these improvements are due, at least in part, to actions the Board has taken since 1986. These actions included such things as (1) scheduling more frequent meetings of all Board members, (2) holding special meetings to focus on the Board's oldest cases, (3) reinstituting and placing renewed emphasis on Board members' use of case-monitoring reports associated with the oldest cases, and (4) encouraging the use of expediting techniques for less complex cases and oral rather than written staff reports to the Board in some cases. According to the Chairman, his objective has been to create a more collegial decision-making environment in which Board members would be encouraged to focus on ways to expedite their decisions.

---

## **Factors That Caused or Contributed to Excessive Delay**

We identified three factors that caused or contributed to cases taking an inordinate time to decide from 1984 through 1989: (1) lack of standards and procedures to prevent excessive delays, (2) lack of timely decisions on major-issue (lead) cases that delay related cases, and (3) Board-member turnover and vacancies. Appendix V contains case chronologies illustrating these factors for specific cases.

---

## **Lack of Standards and Procedures to Prevent Excessive Delays**

The Board has no standards for the total length of time it considers acceptable for a contested case to be at the Board or the length of time a case can remain in each decision stage before corrective action is required. In the absence of such standards, its monitoring procedures do not require Board members or their staffs to focus on cases most likely to show excessive delays unless corrective action is taken.<sup>8</sup> Such action might include earlier or more direct Board-member involvement in

---

<sup>8</sup>Since 1973, the Board has had one policy option designed to circumvent case delays during the final decision stage. If a member takes more than 2 weeks to submit a formal written dissent, the Board can proceed with issuance of the final decision without waiting for the dissent. However, according to the Executive Secretary, this option has not been used since 1984 because generally it is effective only when the Board is at full strength and members have served on the Board for a substantial length of time.

---

**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

---

addressing delays during the early decision stages. The Executive Secretary monitors case performance at the five-member Board (see app. IV). The criteria used for indicating cases needing attention are (1) expected times in which typical cases are likely to move through each of the three stages,<sup>9</sup> (2) the age of a case relative to others at the Board (that is, which cases are older than others), and (3) the specific characteristics of cases, such as which ones are lead cases for which decisions on other cases are dependent.

None of the criteria used in the Board's monitoring reflect an agreement about what specific amount of time, if exceeded, constitutes a problem needing attention. The term "overdue" is used on periodic reports from the Executive Secretary's office to Board members to describe the status of cases that have exceeded their time targets, but the targets usually used for the three stages total only 2 months. That 2-month period is much shorter than what former Board chairpersons we interviewed described as a reasonable outer limit for deciding cases. (As noted earlier, based on their comments, we used exceeding 2 years as a definition of inordinate delay.) In fact, in fiscal year 1989, about 90 percent of all cases had been assigned to a Board member more than 2 months, and 70 percent more than 4 months, before they were decided. Thus, the time targets used for the various stages would identify most cases as needing attention, rather than focusing attention on those where action is needed to help prevent their exceeding a reasonable maximum timeframe.

Most of the cases in our judgmental sample illustrate situations in which the Board's usually expected timeframes were greatly exceeded. One case, for example, was delayed for 4 months in Stage II when the staff attorney assigned to the case was detailed to a regional office and no action was taken on the case until the attorney returned. (See app. V, case 4.) In another case, a draft decision remained in Stage II without any action because the member's Chief Counsel was not satisfied with the decision drafted by the staff. After 11 months the member decided to circulate the draft, even though it did not meet the Chief Counsel's approval. (See app. V, case 6.)

---

<sup>9</sup>These times are 3 weeks each for Stages I and II and 2 weeks for Stage III, for a total of about 2 months, with an additional 2 months targeted for more complex cases. Some especially complex cases are tracked against dates allowing additional time beyond the 4 months cited above.

---

### Lack of Timely Decisions on Lead Cases Delays Related Cases

Another factor that caused inordinate delay is the spillover effect that occurs when the Board fails to decide lead cases in a timely manner.

When several undecided cases deal with the same issue, the Board selects one case to serve as the principal or lead case and suspends further processing on all related cases—it ices them—until the lead case is decided. These cases essentially receive no further action until the lead case is decided.<sup>10</sup> Lead cases can delay related cases at any decision stage and cases can be delayed several times by different lead cases. (See app. V, cases 1 and 3.) Lead cases may address issues not previously addressed by the Board or may involve reconsideration of previous Board decisions.

Delays attributable to lack of timely lead-case decisions were evident in our samples of 45 lengthy cases closed during fiscal year 1989 and 20 very long cases; that is, cases that, with one exception, took more than 2 years to decide. Although none of the 45 cases closed most quickly during 1989 were delayed by a lead case, at least 13 of the 45 lengthy cases at some time in their case history had been delayed waiting for lead-case decisions. These delays ranged from about 1 month to over 5 years. Likewise, 13 of the 20 very long cases had been delayed by lead cases at least once during the years they remained undecided; 8 had been delayed more than once; and 4 had been delayed three times. Delays ranged from 4 months to 6 years. One case was delayed by 2 lead cases during its 7 years at the Board; once for 4 months and once for 6 years. (See app. V, case 1.) Of 21 lead cases that delayed the 13 cases, 19 took more than 2 years to decide or had been pending for more than 2 years at the end of fiscal year 1989.

---

### Board-Member Turnover and Vacancies

Board-member turnover and Board vacancies from 1980 to 1984 contributed to a backlog of pending cases at the start of the period 1984 through 1989. In addition, Board-member turnover and vacancies during the 6-year period continued to affect case processing even after the backlog was no longer a problem.

---

<sup>10</sup>A 1984 House Government Operations Committee report noted that extensive reexamination and reevaluation of prior Board case law in many areas by a majority of new Board members during the early 1980s had caused hundreds of cases to be held up because they related to issues the Board was reconsidering. A 1984 Congressional Research Service report on decisional trends at the Board also noted that the Board had effected "significant and substantial revisions of policy" in both unfair labor practice and representation case law during the 1981 through 1984 period.

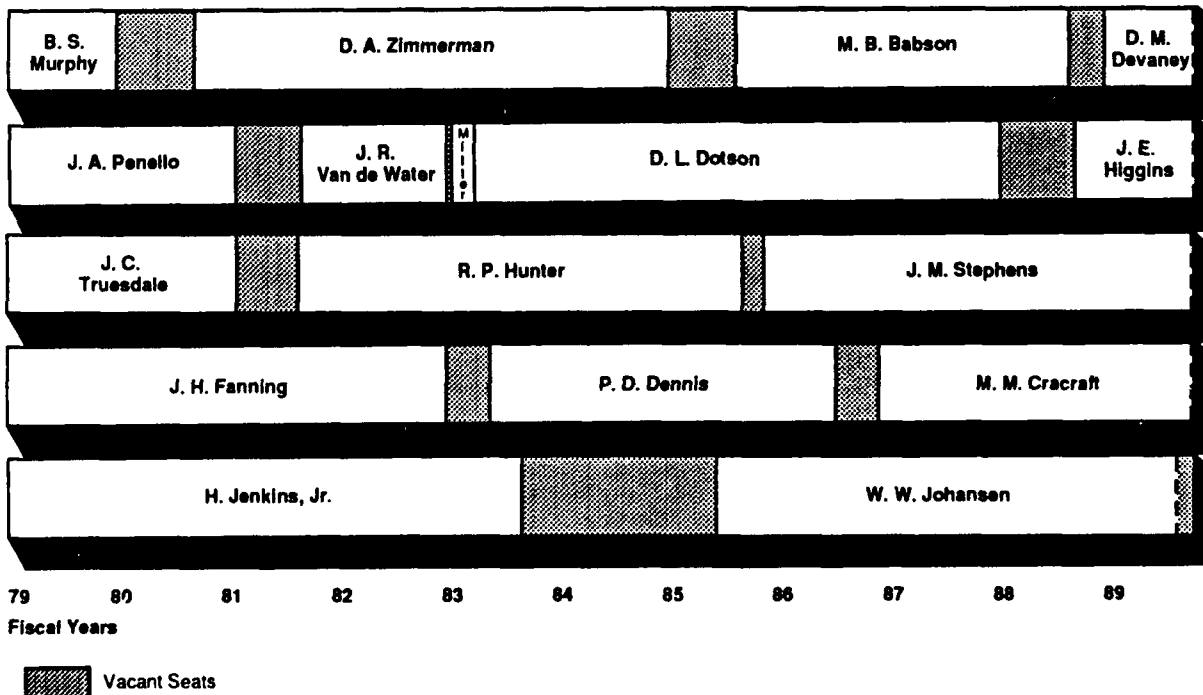
Appendix I  
National Labor Relations Board: Action  
Needed to Improve Case-Processing Time  
at Headquarters

## Turnover

Although members are appointed for 5-year terms, before the 1980s it was common for Board members to complete their terms and serve multiple terms. Board turnover in the 1980s resulted both from members not being reappointed when their terms expired and from Board members leaving before their terms expired.

The five Board members who started fiscal year 1980, who had over 60 years cumulative experience as members, were replaced during fiscal years 1980 to 1983. The Board had as many new members (six) during the first half of the 1980s as it did during the entire 1970s, and more than it had during the 1960s. While six new members arrived during fiscal years 1980 to 1983, seven members departed. (See fig. I.2.)

Figure I.2: NLRB Board-Member Tenure During the 1980s



Turnover contributes to delayed decisions in several ways.

1. A new Board member participating in a case may disagree with the decision being drafted or circulated, with the result that the case returns to Stage I or Stage II for reconsideration. For example, of 185 undecided cases in which a departing member was participating as of May 1989, 5 cases in Stage III were returned to Stage I. One of those cases had been first assigned to a different Board member in March 1985—over 4 years earlier—and was eventually issued in September 1990.

The recycling of cases from Stage III was evident in both sets of cases we analyzed. Six of the 45 cases in our sample of oldest cases had at some time during their processing been recycled from Stage III to Stage II, and 4 of those 6 had also been recycled at some time to Stage I. The Board took from almost 3 to almost 7 years to decide those 6 cases. Likewise, 8 of the 20 cases in our judgmental sample of old cases had at some point been recycled from Stage III due to Board-member turnover. (Of the 8 cases, 4 were closed and 4 were pending.) The Board took from over 2 years to almost 7 years to decide the 4 cases that were closed; the 4 pending cases had been undecided for periods ranging from over 5 to over 6 years.

2. To prepare for the departure of a Board member, the Board focuses for several months on deciding the departing member's cases that have reached Stage III (draft circulation), but will be reassigned to another member if still undecided when the member leaves. Although this is an appropriate way of ensuring that those cases get decided, it means that attention is diverted in the short term from other cases.

3. Departing members' undecided cases are added to remaining members' caseloads. After a member departs, those cases in which the member was participating may experience additional time to be decided while one of the remaining members or a new member is assigned to the case, gets familiar with the issues involved, and takes a position on the case.

4. New Board members need some time to hire their top staff, to get familiar with the cases they inherit and the Board's decision-making process, and to gain enough experience to participate in the most difficult cases awaiting decision. According to the Executive Secretary, the more complex cases are usually not acted on by new Board members until they have gained some experience at the Board.

---

## Vacancies

Vacancies during the 1980s resulted from delays in nominating and confirming Board members to replace both those whose terms had expired and those who did not complete their terms. Various Board positions were vacant for a total of 3 out of each of the 5-year periods 1980 to 1984 and 1985 to 1989. During the 1980 to 1984 period, one newly appointed member served less than 17 months, another served less than 3 months, and, for one 8-month period in 1981, the Board had only three members. The Board also had only three members twice during the 1985 to 1989 period—once for over 7 months and once for about 2 months.

Vacancies contribute to case delays in several ways. The major problem is that, if a Board position remains vacant, workload increases for the remaining members as new cases are assigned. In addition, although such situations are rare, some cases with major policy issues that the members believe should have the input of a complete five-member Board will come to a halt, awaiting the arrival of a new member to fill the vacancy.

---

## Case Backlogs

In combination, turnover and vacancies were, in part, responsible for a backlog of undecided cases at fiscal year end from 1981 through 1986. This backlog occurred even though the number of new cases being assigned to members each year was decreasing. When the Board decided many fewer cases than were assigned, as it did in 1981 and 1983, the number of undecided cases increased. Consequently, the volume of over 1,300 cases pending at fiscal 1983 year end became a barrier to timely case processing during 1984, when the Board's inventory of pending cases peaked at over 1,600 cases and remained at over 1,300 at fiscal year end.

In comparison, during the 1973 to 1979 period, the Board's caseload pending at fiscal year end had ranged from about 320 to 540 pending cases at a time when the number of cases being assigned was increasing. After 1980, even with decreases in new cases assigned, the Board's total caseload—the combination of undecided cases from prior years plus new cases assigned during the year—was higher in fiscal years 1984 and 1985 than in previous years. (See table I.7 and fig. I.3.)

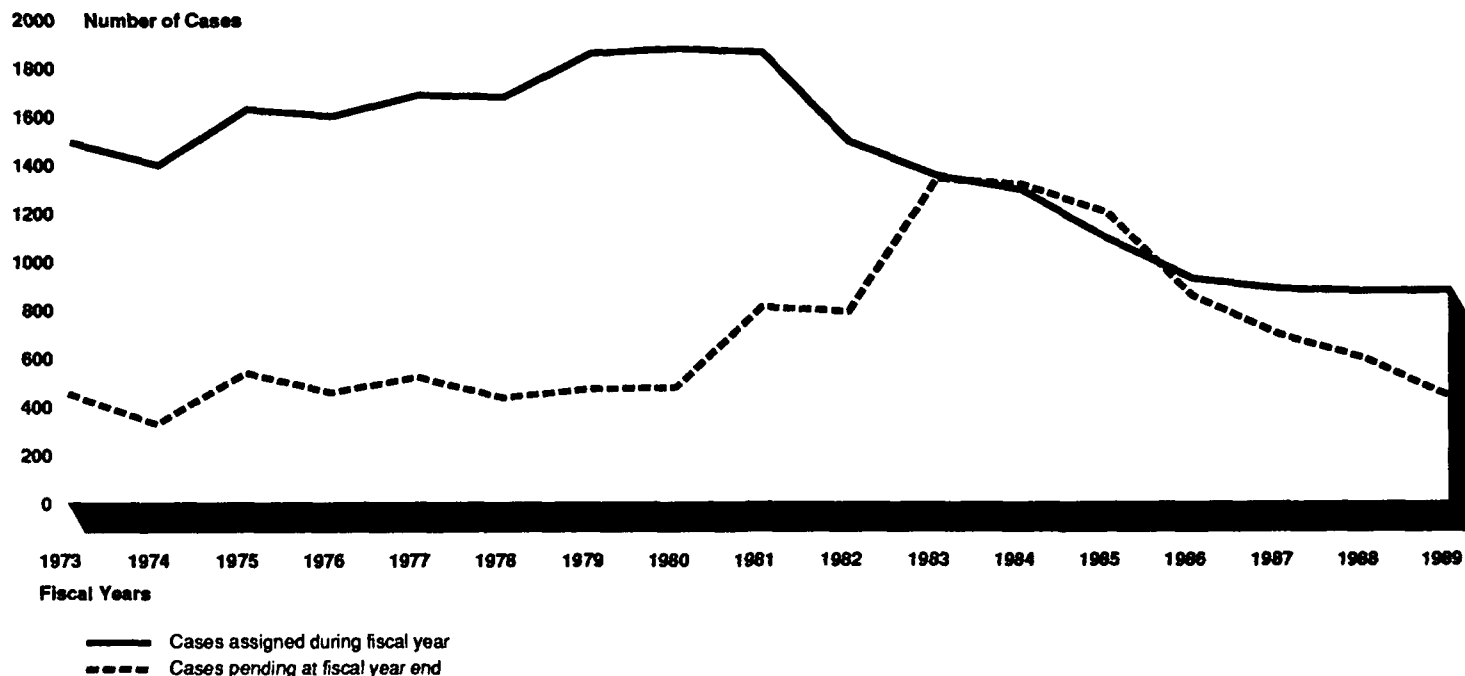
**Appendix I**  
**National Labor Relations Board: Action**  
**Needed to Improve Case-Processing Time**  
**at Headquarters**

**Table I.7: Total Caseload, Cases Assigned, Cases Decided, and Cases Pending at Year End (Fiscal Years 1980-89)**

Fiscal year	Total caseload <sup>a</sup>	Assigned during year	Decided during year	Pending at year end
1980	2,343	1,875	1,857	474
1981	2,332	1,858	1,566	806
1982	2,296	1,490	1,546	788
1983	2,137	1,349	880	1,336
1984	2,625	1,289	1,346	1,313
1985	2,403	1,090	1,315	1,196
1986	2,119	923	1,262	851
1987	1,732	881	1,018	692
1988	1,564	872	995	593
1989	1,467	874	1,038	437

<sup>a</sup>Total caseload consists of the total pending at previous fiscal year end plus the number assigned during the current fiscal year.

**Figure I.3: Cases Assigned During Year and Cases Pending at Year End (Fiscal Years 1973-89)**





---

## Further Actions Needed to Improve Case Processing

Even though timeliness improved in fiscal year 1989, reduced delays were probably due not only to specific actions of the Board, such as focusing on the oldest cases, but also to a reduction in the number of cases coming to the Board. We believe additional Board actions are needed to further improve case-processing timeliness and reduce inordinate delays in deciding cases at the five-member Board.

A range of actions is available for the Board to take in each decision stage if the time target for that stage is exceeded. For example, the Board could adopt procedures for Stage I that would require the three Board members themselves to meet and either (1) decide the case or (2) schedule the case for a meeting of all Board members if the panel members are unable to reach a decision. Likewise, procedures for Stage II could require that either (1) the originating Board-member's senior staff (Deputy Chief Counsel or Chief Counsel) or (2) the originating member intervene in the drafting process to expedite the draft decision. Procedures for Stage III could include (1) more frequent use of the existing option to issue decisions without waiting for untimely written dissents, once a majority of members have approved the draft, or (2) mandatory "overdue agenda" meetings at which Board members would either approve the draft, provide oral instead of written dissents, revise the draft themselves, or direct staff to make revisions within a specified period of time.

Reasonable standards for the maximum time cases could remain in any decision stage before corrective action is required, combined with procedures for corrective action in each decision stage, would allow Board members to focus early in the decision process on a limited number of potentially lengthy cases most in need of attention. Over time, such targets and procedures, if adhered to, should reduce the likelihood that any significant number or percent of Board cases would take excessive time to decide.

---

## Recommendations

We recommend that the Chairman of the National Labor Relations Board (1) establish standards for the total length of time a case should be at the Board and a time for each decision stage that, when exceeded, requires corrective action and (2) specify corrective actions that Board members and staff should take when those targets are exceeded. Such action could range from more extensive Board-member involvement in addressing delays during the first two decision stages to more frequent use of the existing policy option to issue decisions without waiting for untimely written dissents during the final decision stage.

---

## Matter for Congressional Consideration

To help reduce the problem of Board-member turnover and vacancies, the Congress may wish to provide for more continuity of members. The Congress could amend the NLRA to include provisions similar to those in some other agencies that would allow Board members whose terms are ending to either (1) stay at the Board until their replacement has been confirmed or (2) continue for a limited period while a replacement is being sought.

Legislation to permit Board-member continuation (H.R. 8408) was introduced during the 94th Congress and favorably discussed in a 1976 committee print.<sup>11</sup> However, former Board chairpersons and others with whom we discussed this proposal said that prompt presidential and congressional action to fill vacancies, coupled with Board-members' willingness to serve a full term, was preferable to such legislation.

---

## Agency Comments

The Board provided written comments on a draft of this report that appear in appendix VII. The Board generally concurred with our recommendations. The Board said it was adding a new component to its case-management system that would identify for corrective action by all Board members any case that takes longer than 6 months in any of the three decision stages and was developing procedures and corrective actions for implementing this new system in each decision stage. The Board also said that incorporating an outside limit of 2 years for issuing a decision is a useful benchmark and that it was taking action toward the goal of having no cases at the Board more than 2 years.

The Board agreed with the report regarding (1) the disruptive impact of Board-member turnover and vacancies, (2) Board progress in case processing over the last several years, and (3) the need for further improvement. However, the Board said it believes the report places too much emphasis on two factors cited as contributing to excessive delay; they are, the lack of standards and procedures to prevent such delay and the lack of timely decisions in lead cases. GAO continues to believe that the absence of such standards and procedures (which the Board has agreed to establish) and the impact of lead case delays were significant factors that warrant the extent of discussion in the report.

---

<sup>11</sup> A Staff Report on the National Labor Relations Act and Its Administration by the National Labor Relations Board Together with Supplemental Views. Report to the U.S. House of Representatives, Subcommittee on Labor-Management Relations, Committee on Education and Labor. Washington, DC: U.S. Government Printing Office, 1977.

# Methodology

## Determining Case-Processing Times

To determine how long the Board was taking to decide cases, we obtained a copy of NLRB's headquarters management-information-system (Executive Secretary's) data base. We reviewed data for all cases pending at the start of fiscal year 1984 and, for each of the fiscal years 1984 through 1989, all cases decided during each year and all cases pending at the end of each year. (Agency officials told us that the data base for case activity before fiscal year 1984 was not complete due to installation of new computer hardware and related programming changes.)

We verified the accuracy of selected information in the Executive Secretary's data base—primarily dates used to calculate case-processing timeframes—by tracing a sample of cases to source documents and records. Although our sample was not of sufficient size to comment on the accuracy of all data on the tape, we found that the dates provided were generally accurate.

For cases decided from 1984 through 1989, we calculated the amount of time, in days, from the date the case was assigned to a Board member to the date NLRB issued its decision, for all cases issued each year. To summarize each year's closed-case timeframes—the age of cases—we used median days. (The median is a statistical calculation reflecting the midpoint; that is, one-half the items—in this situation, the number of days to decide cases—are equal to or below the median and one-half are equal to or above it.)

## Determining "Inordinate Delay"

To identify criteria for defining "inordinate delay," we reviewed NLRA and its legislative history, agency procedures, the Employment and Housing Subcommittee's 1983 to 1988 oversight hearings, and prior internal and external studies of NLRB. We also interviewed six former Board chairpersons whose tenure ranged from 1957 to 1987. We identified two criteria:

- relative performance; that is, the amount of time NLRB took to decide cases in the period 1984 through 1989 compared with the amount of time it took before 1984 (1960-83); and
- reasonableness; that is, opinions of former and current Board members and staff about the amount of time they considered inordinate.

To assess NLRB's headquarters relative performance, we used data from the agency's annual appropriations estimates. These documents contain tables with historical median-processing times for both unfair labor

practice cases and representation cases. We compiled data for the 30-year period 1960 to 1989. (As we note in app. I, however, appropriation data include a portion of time outside the scope of our review; that is, the time between completion of regional action and the time cases are assigned to Board members.)

To describe the Board's actual performance, we calculated, from the Executive Secretary's data base, median days for approximately 5,000 cases appealed to the Board and decided during fiscal years 1984 through 1989. We excluded from any detailed analyses approximately 1,700 other cases decided during those years that did not involve regional hearings. (Until fiscal year 1991, the agency's annual appropriation estimates had also excluded those types of cases from its reported median-day calculations for Board decisions. We calculated that the median time to decide those 1,700 cases from 1984 through 1989 was 75 days.)

To define inordinate delay, we asked six former Board chairpersons about the maximum amount of time that cases assigned to Board members should be allowed to remain undecided. They generally agreed that any case undecided after 2 years at the Board had been there too long. We consequently used more than 2 years as a reasonable criterion to describe cases that experienced inordinate delay.

We used a combination of our two criteria to reach conclusions about the extent of inordinate delay in particular cases and at the Board from 1984 to 1989.

---

## Identifying Factors Contributing to Delays

To identify factors that contributed to inordinate delay, we developed a list of factors that could cause case-processing delays at NLRB headquarters. We derived our list from prior internal and external studies of NLRB; agency testimony during oversight hearings; and interviews with Board officials, staff, and outside experts. We then determined if each factor could be documented from aggregate data, such as the Executive Secretary's data base, or whether other techniques, such as case-file reviews and interviews, were more appropriate.

We eliminated some factors from further analysis after we determined that they (1) did not occur to any significant degree from 1984 to 1989, (2) were applicable primarily to case processing at the regional level, or (3) were not easily measurable. Examples of factors we eliminated are remands from appeals courts (not a significant number of Board cases),

the legislative requirement that regions give priority to certain kinds of cases, and Board-member experience at NLRB headquarters (not easily measurable).

The Executive Secretary's data base was useful for calculating the extent of delay in each of the three decision stages for individual cases, all cases each year, and all cases from 1984 to 1989, but it provided limited information about our remaining factors. We could, for example, identify cases with a large number of transcript pages as a potential indicator of a "case complexity" factor, but could not conclude that this factor caused or contributed to delay without supplemental information from those who had been involved in processing and/or deciding the case.

Consequently, we designed three data collection instruments to elicit information from Board staff and the Executive Secretary's office about whether certain factors applied to or occurred during the headquarters case processing for selected cases. We then selected two samples of cases to analyze: (1) a random sample of 90 cases from the universe of 695 cases—45 of the longest and 45 of the shortest—decided during the most recent complete fiscal year (1989) and (2) a judgmental sample of 20 cases. We selected some of these 20 cases because they had been cited during oversight hearings from 1983 to 1988 as having taken a particularly long time to decide; some because they had been closed in the most recent fiscal year after more than 2 years at the Board; and some because, at the end of fiscal year 1989, they were still undecided after more than 2 years.

For the 90 randomly selected cases, we used one data collection instrument for the Executive Secretary's office and one for the staff attorneys to whom the cases had been assigned. By comparing results from the 45 longest with the 45 shortest timeframes, we could confirm whether certain factors were more likely to occur in long cases.

For the 20 judgmentally selected cases, we used a third data collection instrument to identify delay factors that may have occurred. With case chronologies prepared by the Executive Secretary's office as a starting point, we used our instrument to interview staff attorneys and supervisory attorneys, Deputy Chief Counsels, Chief Counsels, and Board members. Those interviews, supplemented by information we obtained from case file reviews, documented how certain factors caused or contributed to delayed case decisions. Appendix V contains case chronologies that provide detailed examples on seven judgmentally selected cases closed

during fiscal years 1987, 1988, or 1989 or pending at fiscal 1989 year end.

## Assessing the Need for Additional Administrative or Legislative Action

To address the requesters' question about whether the National Labor Relations Act should be amended to prevent inordinate delay by Board members, we examined a wide range of legislative proposals made since 1961 to improve NLRB decision-making timeliness. We reviewed House and Senate hearings and reports; bills introduced but not enacted; an authoritative text on NLRB case processing;<sup>1</sup> professional journal articles;<sup>2</sup> and studies by experts and organizations, such as the Administrative Conference of the United States, the Congressional Research Service, and the Office of Personnel Management.<sup>3</sup> We also interviewed the current and former NLRB Board chairpersons and the current Executive Secretary about various legislative proposals to expedite NLRB headquarters decisionmaking.

For additional perspective on NLRB's decision-making timeframes, we obtained data from two other agencies about their headquarters case-processing performance from 1984 to 1989—the Federal Labor Relations Authority and the Merit Systems Protection Board. We also reviewed legislation applicable to those agencies to note any statutory requirements for agency decisions within specific timeframes.

<sup>1</sup>McGuiness, Kenneth C. and Jeffrey A. Norris. How to Take a Case Before the NLRB. 5th ed. Washington, DC: Bureau of National Affairs, Inc., 1986.

<sup>2</sup>An example is Silver, Edward and Joan McAvoy. "The National Labor Relations Act At the Crossroads." Fordham Law Review. Vol. LVI, No. 2 (Nov. 1987).

<sup>3</sup>Miller, Edward B. An Administrative Appraisal of the NLRB. (Revised Edition) No. 16, Labor Relations and Public Policy Series. Philadelphia, PA: University of Pennsylvania, 1980; Rosenberg, Morton. Current Decisional Trends at the National Labor Relations Board, Report to Rep. Dennis Eckart. U.S. Congressional Research Service, American Law Division. Washington, DC: May 4, 1984; U.S. Office of Personnel Management. Workforce Effectiveness and Development Group. Exemplary Practices in Federal Productivity. Vol. 3, Case Management in NLRB's Office of the General Counsel. Washington, DC: Aug. 1980.

---

# Overview: How the Five-Member Board Decides Cases

---

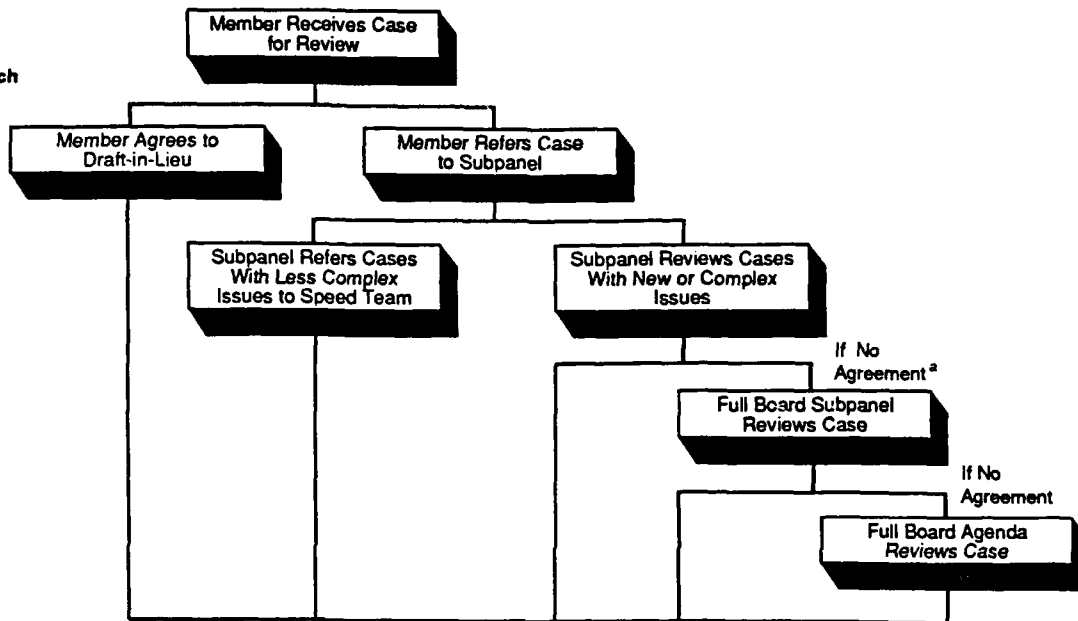
The Board uses a three-step process in deciding cases. Stage I consists of analysis and research; Stage II, drafting the decision; and Stage III, circulating the draft decision.

During Stages I and II, Board-member staff play key roles. For example, in arriving at a preliminary decision in Stage I, the originating-member's staff analyzes the case transcript and regional decision, conducts research on prior Board decisions, and meets with staff members representing each participating member. In this meeting, which is called a subpanel, the representatives vote on whether to accept or reject the regional decision. (This vote reflects discussion between the members or members' senior staff and the members' representatives to obtain the members' views prior to subpanel.) If the subpanel (representing the three panel members) is unable to reach a preliminary decision, representatives of all Board members—a Full Board Subpanel—may meet to vote on the decision. Sometimes, cases of particular complexity require a meeting of all Board members themselves, not just their representatives—a Full Board Agenda—to reach a preliminary decision. (See fig. III.1.) Thus, cases can reach Full Board Agenda review either directly from subpanel or through Full Board Subpanel review.

**Appendix III**  
**Overview: How the Five-Member Board**  
**Decides Cases**

**Figure III.1: How the Five-Member Board Decides Cases**

**Stage I:**  
**Analysis and Research**



**Stage II:**  
**Draft Decision**

Recommendation Made to Accept, Modify, or Reject ALJ Regional Director Decision

Staff Attorney Prepares a Draft Decision

**Stage III:**  
**Circulation**

Full Board Reviews Each Case

Majority of Board Approves Draft Decision

Majority of Board Rejects Draft Decision

Board Issues Decision (published by Executive Secretary)

Board Refers Case Back to Stage I or Stage II

<sup>a</sup>Cases may bypass Full Board Subpanel and proceed directly to Full Board Agenda



The Board has procedures for expediting certain less complex cases that may require little analysis and research. For example, an originating member may decide that a case does not warrant subpanel review and that the regional decision should be adopted. In such cases, the member directs staff to prepare a draft-in-lieu (of subpanel) decision and Stage I ends. (NLRB's Executive Secretary told us that about 10 percent of the Board's decisions are drafts-in-lieu.) In other less complex cases, a subpanel may decide that speed team procedures are appropriate; that is, staff can expedite drafting a decision because Board precedent already exists on the issues in the case and the facts are not in dispute.

During Stage II, the originating member's staff attorney assigned to the case drafts a Board decision reflecting the preliminary decision made in Stage I by either the originating member, the subpanel, a Full Board Subpanel, or the full Board.

When the originating member approves the draft, it circulates in Stage III to participating members for approval and to other members for clearance. In general, all Board members other than the originating member are reviewing the draft decision for the first time in this stage. (Before stage III, Board members have presented their views on the case either directly or through their Chief Counsels or Deputy Chief Counsels.) At this time, circulating drafts may undergo numerous changes to reflect Board members' individual views. Board members reviewing the draft decision for the first time may have views different than their representatives had when the preliminary decision was reached in Stage I. Members sometimes write separate concurring or dissenting opinions on the decision. Generally, a dissenting Board member will circulate an interoffice memo explaining the reasons for dissent. Some cases in Stage III return to Stages II or I when Board members are unable to agree on the decision or when Board members leave the Board.

Stage III ends when all participating Board members have approved and returned the draft to the Executive Secretary's office. The originating staff counsel prepares what is called a "conformed" Board decision to reflect all changes that occurred during circulation, and the Executive Secretary forwards the decision for editing and publication. The Executive Secretary's office issues the final Board Decision and Order to the parties in the case.

Before 1963, the Board implemented a case-handling procedure for newly assigned cases that involve the same or related legal or policy issues as those in another pending case. The procedure allows Board

---

**Appendix III**  
**Overview: How the Five-Member Board**  
**Decides Cases**

---

members to delay further processing—to ice a case—until the Board issues a final decision in the pending lead case. Cases may be iced in any decision stage. Cases may also be iced for other reasons, such as waiting for a fourth or fifth Board member to participate in deciding the case or waiting for a Supreme Court decision.

# Headquarters Case Monitoring

Responsibility for monitoring the timeliness of the Board's case processing is shared between NLRB's General Counsel and the five-member Board. The General Counsel monitors case-processing performance in NLRB's regional offices,<sup>1</sup> while the Executive Secretary monitors headquarters performance by the members.

At NLRB headquarters, the Office of the Executive Secretary monitors the status of pending Board cases, particularly cases overdue in the various decision stages. Cases are considered overdue when the amount of time in that stage exceeds the expected time targets established for each stage: either (1) 3 weeks each for Stages I and II, and 2 weeks for Stage III—about 60 days for all three stages—or (2) in especially complex cases, alternative dates set by the member's staff.<sup>2</sup>

The Office's monitoring consists of over 10 computer-based or manually prepared reports. These are sent weekly, biweekly, or monthly to individual Board members, their Deputy and Chief Counsels, or the full Board. The reports provide such information as the median number of days cases are overdue in a decision stage, lists of certain types of cases (oldest, complex, less complex, lead, or new policy) that warrant expedited processing, and a description of the most recent action either taken or required by individual Board members.

Examples of case-monitoring reports include:

- Report of cases overdue in each stage. This identifies, by individual Board member, the number and percent of all pending cases that are 8 days or more overdue in Stage I and 2 weeks or more overdue in Stage II. It also lists those cases and Board members' Chief Counsels who are responsible for informing the Executive Secretary's office of any new or future actions expected in each case.
- Oldest to Newest Pending Cases report. This report lists by age all cases pending at the Board, the decision stage of the case, the names of Board members deciding it, and the most recent action either taken or required by individual members.

<sup>1</sup>A 1986 report by the Administrative Conference of the United States encouraged other federal agencies to adopt interim time targets and other management controls, such as those used by NLRB's Office of General Counsel. See Administrative Conference of the United States (Office of the Chairman) Recommendations and Reports, 1986. "Recommendation 86-7: Case Management as a Tool for Improving Agency Adjudication," and "Rec. 86-7: Charles Pou, Jr. and Charlotte Jones. Agency Time Limits as a Tool for Reducing Regulatory Delay." Washington, DC: U.S. Government Printing Office, 1986.

<sup>2</sup>According to the Executive Secretary's office, however, alternative dates are rarely used for case monitoring.

- Stage III Pending Cases by Board Member report. This lists, by individual Board member, pending cases in stage III. Similar to the Oldest to Newest Pending Cases report, it provides a summary of Board members assigned to the cases and the names of other Board members that need to take some action on each case.
- Members-Only list. Provided twice a month, this list identifies for each Board member the cases pending in Stage III that could be issued if he or she would take some action on the case. In the past, the Members-Only list circulated to all members, but now members receive only the list of cases delayed by their inaction.

# Examples of Delays in Selected Cases That Took More Than 2 Years to Decide

We selected the following seven cases to illustrate delays at NLRB headquarters. The delays occurred while the Board was deciding these cases, which had been appealed in the regions or otherwise transferred to headquarters for a decision. They are part of the 20 cases we judgmentally selected to examine to better understand cases that took more than 2 years to decide or were still undecided after 2 years. These seven represent (1) cases that were discussed during oversight hearings held from 1983 to 1988 (cases 2, 3, 4, 5, and 6); (2) one case that had been closed during the most recent fiscal year (case 1); and (3) one case that was still pending at the end of the most recent fiscal year covered by our review (case 7). Two of these seven are representation cases (cases 1 and 2); the others are unfair labor practice cases. Factors responsible for delays in the seven cases are summarized in table V.1.

As discussed in appendixes I and III, most Board cases are decided by panels comprised of three Board members, rather than by the full Board (all Board members). Panels consist of the originating member to whom the case is assigned and two other members participating in the case. To illustrate Board-member turnover and the changing composition of panel membership that occurred during case processing, the following case chronologies identify panel members associated with the case. Panel members are listed in order of the originating member followed by the participating members. (Case 7 also lists certain panel members who could not participate in the case due to conflicts of interest but who were listed as originating or participating members of the panels during the case history.)

Each Board member has a staff consisting of a Chief Counsel, a Deputy Chief Counsel, supervisory counsels, and counsels (staff attorneys). During the decision-making process, Board staff perform such key functions as receiving and researching the case, presenting the members' views at various decision points during case processing (unless presented by the members themselves), and drafting and revising the Board decision.

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

**Table V.1: Factors Responsible for**  
**Delays in Selected Cases**

	<b>Lack of standards and procedures</b>	<b>Delays in lead cases</b>	<b>Turnover and vacancies</b>
1. Livingstone College		X <sup>a</sup>	
2. Manor Healthcare		X <sup>b</sup>	
3. Schwab Foods <sup>c</sup>	X	X	X
4. Seattle Seahawks	X <sup>d</sup>		(X) <sup>g</sup>
5. Lundy Packing	X <sup>e</sup>		(X) <sup>g</sup>
6. E.I. du Pont	X <sup>f</sup>		
7. Open case <sup>h</sup>	X	X	X

<sup>a</sup>Case delayed for more than 6 years for decision on previous Livingstone case, which in turn was delayed by Hanna Boys Center.

<sup>b</sup>Case delayed for 11 months awaiting St. Francis decision.

<sup>c</sup>May 1982 to September 1985, 39-month delay illustrates all three factors. There was no staff action or Board-member meeting regarding this case during this period. Drafting the decision was discontinued due to uncertainty over two lead cases that were at the Board for more than 5 years—The Fairmont Hotel and Sahara Tahoe. During the more than 7 years this case was at headquarters, 17 Board members participated in the case.

<sup>d</sup>Deputy Chief Counsel had "mental block" for 23 months and held the draft decision for a 29-month delay.

<sup>e</sup>Subpanel did not meet again for 2 years after it was unable to reach a decision in March 1985. Previously, in 1984, writing and revising the draft decision took 11 months. As a result of that delay, turnover affected the case when there was a delay for a new Board member and the case returned to Stage I.

<sup>f</sup>Chief Counsel held draft for 11 months with no action after draft was submitted for review.

<sup>g</sup>Probable secondary rather than primary factor.

<sup>h</sup>Case illustrates all three factors. Drafting the decision took 13 months, in part because staff attorney was detailed to NLRB Solicitor's office for 3 months. Case was delayed 12 months awaiting Board decision on Reichhold Chemicals, Inc., which had been remanded from a circuit court. Case returned to Stage I after a Board member departed, additional Board-member turnover occurred, and 15 months passed before a new subpanel met.

## Case 1

Name

Livingstone College, Employer, and Livingstone College Federation of Teachers and Librarians, AFT, AFL-CIO, Local 4110, Petitioner (11-RC-4989).

Issue

Will nonprofessional employees be represented by the petitioner (union) and included in an appropriate bargaining unit under section 9(a)?

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

---

**Timeframe Summary**

The petitioner filed a petition in April 1981. The case was assigned to a Board member in June 1981. NLRB issued its decision in July 1988. A period of 7 years elapsed at headquarters. A total period of 7 years and 3 months elapsed from filing to Board decision.

---

**Key Events**

February 1981. NLRB Region 11 Acting Director asserts NLRB jurisdiction over employer Livingstone in case 11-RC-4957 and directs that an election be conducted.

March 1981. Employer requests NLRB headquarters review of Region 11 decision in 11-RC-4957. Board member Jenkins ices case pending resolution of similar jurisdictional issues in case 20-RC-15178 (Hanna Boys Center).

April 1981. Petitioner (Local 4110) requests that bargaining unit consist of all full-time, nonprofessional employees at the main campus (case 11-RC-4989).

May 1981. After hearings on petitioner's request, NLRB Region 11 transfers case (11-RC-4989) to NLRB headquarters for decision.

June 1981. Executive Secretary (NLRB headquarters) assigns case to member Zimmerman. Stage I begins.

Panel: Zimmerman, Fanning, Jenkins (June 1981).

Board ices case (11-RC-4989) pending resolution of NLRB jurisdictional issues in prior Livingstone case, 11-RC-4957.

August 1981 to July 1987. 6-year delay as case remains iced while Board-member turnover and vacancies occur. Original panel members Fanning, Jenkins, and Zimmerman depart in 1982, 1983, and 1984, respectively. Responsibility for staff assigned to Zimmerman passes in turn to members Hunter, Dotson, and Johansen.

Panels: Zimmerman, Hunter, Jenkins (November 1982).

Zimmerman, Dotson, Jenkins (March 1983).

Hunter, Dotson, Dennis (November 1984).

Dotson, Babson, Dennis (November 1985).

Dotson, Babson, Johansen (March 1986).

---

Appendix V  
Examples of Delays in Selected Cases That  
Took More Than 2 Years to Decide

---

July 1987. NLRB issues decision 284 NLRB No. 21 in Hanna Boys Center, resolving jurisdictional issues, and thus allowing Livingstone 11-RC-4957 to proceed.

July 1987 to November 1987. 4-month delay while case (11-RC-4989) remains iced pending Board decision on Livingstone jurisdictional issue. NLRB issues decision 286 NLRB No. 124 in Livingstone 11-RC-4957, affirming Region 11 Acting Director's February 1981 decision regarding NLRB jurisdiction over employer.

Panel: Johansen, Babson, Cracraft (November 1987).

January 1988. Johansen subpanel meets and reaches preliminary decision. Stage I ends. Johansen staff attorney begins drafting NLRB decision. Stage II begins.

May 1988. Johansen circulates draft decision to participating members Cracraft and Babson. Stage II ends, Stage III begins.

July 1988. Stage III ends. NLRB issues decision 290 NLRB No. 41 affirming the appropriateness of the bargaining unit in the April 1981 petition and directs that an election be held.

---

## Case 2

Name	Manor Healthcare Corporation and Professional & Health Care Division, United Food & Commercial Workers Union, Local 27, AFL-CIO (5-RC-11974).
Issue	Is a bargaining unit consisting of employees at one convalescent home the smallest appropriate unit for collective bargaining purposes under section 9(a), or is a unit consisting of employees at three of the employer's facilities the smallest appropriate unit?
Timeframe Summary	The petitioner filed a petition in April 1983. The case was assigned to a Board member in August 1983. NLRB issued its decision in August 1987. A period of 4 years elapsed at headquarters. A total period of 4 years and 4 months elapsed from filing to Board decision.



---

Appendix V  
Examples of Delays in Selected Cases That  
Took More Than 2 Years to Decide

---

Key Events

April 1983. Petitioner (Local 27) files petition for election.

May 1983. Acting Regional Director for NLRB Region 5 issues decision and directs that election be held. Employer files request for review of Region 5 decision.

July 1983. Five-member Board grants employer's request for review and postpones election pending decision on review.

August 1983. Executive Secretary (NLRB headquarters) assigns case to member Jenkins. Stage I begins.

Panel: Jenkins, Zimmerman, Dotson (August 1983).

Jenkins departs Board. Executive Secretary reassigns case to member Dotson.

Panel: Dotson, Zimmerman, Hunter (August 1983).

September 1983. Dotson (Jenkins) subpanel meets and reaches preliminary decision. Stage I ends. Dotson staff attorney (detailed from departed member Jenkins) begins drafting decision. Stage II begins.

November 1983. Dotson circulates draft decision to members Zimmerman and Hunter. Stage II ends, Stage III begins.

November 1983 to February 1984. 3-month delay as draft circulates. Board is unable to reach a majority decision.

February 1984. Hunter requests member Dennis to substitute for him. Dennis declines to substitute. Hunter requests Full Board Subpanel to review case.

February 1984 to July 1984. 5-month delay while case is scheduled for Full Board Subpanel.

July 1984. Full Board Subpanel held. Case returns to Stage I. Board decides to ice case until St. Francis case issues.

July 1984 to June 1985. 11-month delay while case remains iced. Board issues St. Francis case decision in June 1985.

---

Appendix V  
Examples of Delays in Selected Cases That  
Took More Than 2 Years to Decide

---

Panels: Dotson, Dennis, Hunter (December 1984).  
Dotson, Dennis, Babson (July 1985).

September 1985. Dotson subpanel meets and reaches decision. Stage I ends. Dotson staff attorney begins draft. Stage II begins.

October 1985. Dotson circulates draft decision. Stage II ends, Stage III begins.

October 1985 to August 1986. 10-month delay while members reply to draft. Panel members exchange memos but are unable to reach a majority decision. Case returns to Stage II for revised draft. New member Stephens begins term. Executive Secretary reassigns case to Stephens (November 1985).

Panel: Stephens, Dotson, Johansen (December 1985).

August 1986 to May 1987. 9-month period while Stephens' staff prepares revised draft decision to take into account court decision in St. Francis II.

May 1987. Stephens circulates draft to full Board with his approval. Stage II ends, Stage III begins.

August 1987. NLRB issues decision 285 NLRB No. 34, adopting the Acting Regional Director's May 1983 decision and remanding the proceeding to Region 5 to conduct the election.

---

### Case 3

---

Name	Schwab Foods, Inc., d/b/a Mooresville IGA Foodliner, and Local 725, Retail Clerks International Association, AFL-CIO (25-CA-9465-2, 25-CA-9648, and 25-CA-9762).
Issues	Did the respondent violate sections 8(a)(1), 8(a)(2), and 8(a)(5) by restricting strikers from picketing on its premises; by rendering proscribed assistance to a labor organization other than the union it was required to recognize; and by engaging in surface bargaining?

---

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

---

**Timeframe Summary**

The complainant filed a charge in December 1977. The case was assigned to a Board member in November 1979. NLRB issued its decision in July 1987. A period of 7 years and 8 months elapsed at headquarters. A total period of 9 years and 7 months elapsed from filing to Board decision.

---

**Key Events**

December 1977. Complainant (Local 725) files unfair labor practice charge against respondent Schwab Foods, Inc.

September 1979. ALJ issues decision in favor of Local 725.

November 1979. Respondent Schwab Foods, Inc., contests ALJ decision.

November 1979. Executive Secretary (NLRB headquarters) assigns case to member Murphy. Stage I begins.

Panel: Murphy, Penello, Truesdale (November 1979).

December 1979. Murphy departs Board. Murphy's staff is detailed to Fanning. Fanning's (Murphy) subpanel meets and reaches preliminary decision. Stage I ends. Fanning staff attorney begins drafting decision. Stage II begins.

Panel: Fanning, Penello, Truesdale (December 1979).

December 1979 to August 1980. 8-month period while staff attorney drafts preliminary decision.

August 1980 to March 1982. 19-month delay while Board-member turnover and vacancies occur. Member Zimmerman begins tenure at Board in August 1980. Staff of former member Murphy, detailed to Chairman Fanning since December 1979, is assigned to Zimmerman. After members Penello and Truesdale depart in January 1981, Board consists of 3 members (Fanning, Jenkins, and Zimmerman) for 6 months.

Panels: Zimmerman, Penello, Truesdale (August 1980).

Zimmerman, Fanning, Truesdale (January 1981).

Zimmerman, Fanning, Jenkins (January 1981).

March 1982. Stage II ends. Zimmerman circulates initial draft decision. Stage III begins. Jenkins ices case pending resolution of similar section

---

Appendix V  
Examples of Delays in Selected Cases That  
Took More Than 2 Years to Decide

---

8(a)(1) employee access issues in Providence Hospital case (01-CA-17255) pending before Board.

May 1982. NLRB's draft decision in Providence Hospital circulates. Full Board (5 members) meets and decides to revise Schwab Foods decision based on different rationale than that used by December 1979 Fanning (Murphy) subpanel. Case returns to Stage II. Zimmerman's staff attorney begins drafting decision, then later discontinues drafting because of unresolved lead access cases.

May 1982 to September 1985. 39-month delay while Board member turnover and vacancies occur. Members Fanning, Jenkins, Zimmerman and Hunter depart in 1982, 1983, 1984, and 1985, respectively. Chairman Dotson begins tenure in 1983. Responsibility for staff assigned to Zimmerman passes in turn to members Hunter in December 1984, then Dotson in July 1985.

Panels: Zimmerman, Hunter, Jenkins (November 1982).  
Hunter, Dennis, Dotson (October 1984).  
Dotson, Babson, Johansen (July 1985).

September 1985. Full Board (4 members) meets to discuss section 8(a)(1) issues in Schwab Foods. Members decide to rely on original rationale rather than that cited in May 1982 subpanel discussion. All members withhold vote pending review of draft decision in The Fairmont Hotel case with similar issues.

September 1985 to July 1986. 10-month delay while case is iced awaiting The Fairmont Hotel draft. Full Board subpanel meets in July to resolve section 8(a)(2) and (5) issues.

December 1986. After NLRB issues The Fairmont Hotel Decision 282 NLRB No. 27 in November 1986, Dotson circulates draft decision on Schwab Foods. Stage II ends, Stage III begins.

December 1986 to July 1987. 7-month period to revise draft and conduct special panels to resolve differences among members' positions on case.

July 1987. Stage III ends. NLRB issues Decision 284 NLRB No. 120 affirming the ALJ September 1979 decision in favor of complainant.

---

Appendix V  
Examples of Delays in Selected Cases That  
Took More Than 2 Years to Decide

---

---

Case 4

---

Name	Elmer Nordstrom, Managing Partner, et al., d/b/a Seattle Seahawks, and National Football League Players Association (2-CA-19101).
Issue	Did the respondent discharge the union's player representative (McCullum) in retaliation for union activities, in violation of sections 8(a)(1) and 8(a)(3)?
Timeframe Summary	The complainant filed a charge in September 1982. The case was assigned to a Board member in January 1984. NLRB issued its decision in February 1989. A period of 5 years elapsed at headquarters. A total period of 6 years and 5 months elapsed from filing to Board decision.
Key Events	<p><u>September 1982.</u> Complainant files unfair labor practice charge against respondent Nordstrom.</p> <p><u>November 1983.</u> ALJ issues decision in favor of complainant.</p> <p><u>January 1984.</u> Respondent Nordstrom contests ALJ decision.</p> <p><u>January 1984.</u> Executive Secretary (NLRB headquarters) assigns case to member Dotson. Stage I begins.</p> <p><u>Panel:</u> Dotson, Hunter, Zimmerman (January 1984).</p> <p><u>April 1984.</u> Dotson's subpanel meets and reaches preliminary decision. Stage I ends. Dotson's staff attorney begins drafting NLRB decision. Stage II begins.</p> <p><u>April 1984 to August 1984.</u> 4-month delay while staff attorney is detailed to regional office.</p> <p><u>September 1984.</u> Staff attorney completes draft decision.</p> <p><u>October 1984 to December 1984.</u> 3-month delay when Dotson requests additional research on substantive issues.</p>

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

December 1984. Zimmerman departs Board. Board now consists of only three members.

Panel: Dotson, Hunter, Dennis (November 1984).

December 1984 to July 1985. 7-month delay while Board waits for member Zimmerman vacancy to be filled. New member, Johansen, assigned to Dotson's panel.

Panel: Dotson, Hunter, Johansen (May 1985).

August 1985. Hunter departs Board.

September 1985 to January 1986. 4-month delay while Executive Secretary seeks some other member to substitute on case for departed member Hunter. Member Stephens, who has now taken over originating staff from member Dotson, agrees to substitute after member Dennis declines.

Panels: Dotson, Stephens, Johansen (January 1986).  
Stephens, Dotson, Johansen (January 1986).

January 1986. Case returns to Stage I. Stephens' subpanel reaches preliminary decision similar to that in April 1984. Stage I ends, Stage II begins. Dotson's staff attorney, who completes draft decision in September 1984 (now assigned since December 1985 to Stephens), submits draft to Stephens' supervisory attorney.

February 1986. Supervisory attorney submits draft to Stephens' Deputy Chief Counsel.

February 1986 to July 1988. 29-month delay while Stephens' Deputy Chief Counsel holds draft. Member Cracraft agrees to substitute on case for departed member Dotson. Deputy Chief Counsel submits draft to Chief Counsel in July 1988 for additional analyses of legal issues.

Panel: Stephens, Cracraft, Johansen (January 1988).

August 1988. Chief Counsel rewrites draft decision and submits draft to Stephens for review. Stephens circulates draft of Board decision to participating members Cracraft and Johansen. Stage II ends, Stage III begins.

---

Appendix V  
Examples of Delays in Selected Cases That  
Took More Than 2 Years to Decide

---

August 1988 to January 1989. 5-month delay to revise draft, prepare dissent, and reply to dissent.

February 1989. Stage III ends. NLRB issues Decision 292 NLRB No. 110 affirming ALJ November 1983 decision in favor of complainant.

---

---

## Case 5

Name	Lundy Packing Company and Local 525, Meat, Food and Allied Workers Union, United Food and Commercial Workers International Union, AFL-CIO (11-CA-5790, 5837).
Issue	Did the discriminatees make reasonable job searches during the backpay period and should they be provided interim earnings, medical insurance premiums and other benefits?
Timeframe Summary	The complainant filed a charge in July 1974. The case was assigned to a Board member in March 1982. NLRB issued its decision in September 1987. A period of 5 years and 6 months elapsed at headquarters. A total period of 13 years and 3 months elapsed from filing to Board decision.
Key Events	<p><u>July 1974.</u> Complainant (Local 525) files unfair labor practice charge against respondent Lundy Packing Company.</p> <p><u>March 1976.</u> NLRB issues Decision 223 NLRB No. 36 affirming the ALJ's May 28, 1975, Decision and Order requiring employer to reinstate and/or restore discharged and striking employees' jobs, and provide loss of earnings to the 46 discriminatees.</p> <p><u>August 1981.</u> ALJ issues supplemental decision on backpay for 23 discriminatees.</p> <p><u>September 1981.</u> ALJ issues second supplemental decision on backpay for 23 remaining discriminatees.</p> <p><u>March 1982.</u> Respondent (Lundy Packing Company) contests the ALJ Supplemental Decision.</p>

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

March 1982. Executive Secretary (NLRB headquarters) assigns case to member Jenkins. Stage I begins.

Panel: Jenkins, Fanning, Zimmerman (March 1982).

April 1982. Jenkins' subpanel meets and agrees to overrule employer exceptions to the ALJ credibility determinations and findings.

June 1982. Jenkins' subpanel meets and reaches preliminary decision. Stage I ends.

July 1982. Jenkins' staff attorney begins drafting decision. Stage II begins. Staff attorney reassigned to position of Supervisory Counsel responsible for work of three other staff attorneys.

July 1982 to October 1982. 4-month delay while staff attorney completes tentative draft of Board decision.

October 1982. Staff attorney submits draft of decision for review by supervisor.

December 1982. Jenkins' panel member, Fanning, departs the Board, leaving no majority vote on some issues.

Panel: Jenkins, Hunter, Zimmerman (November 1982).

December 1982 to August 1983. 8-month delay while Board-member turnover and vacancies occur. Fanning's, Van de Water's, Miller's, and Jenkins' terms expire. Miller declines to participate in case because of a conflict of interest, and the supervisory attorney is reassigned to position of Chief Counsel to Chairman Miller (December 1982). Miller's Chief Counsel departs NLRB in spring 1983.

Panel: Jenkins, Dotson, Zimmerman (March 1983).

August 1983. Jenkins' staff detailed to Dotson. Dotson becomes the originating member. Case returns to Stage I.

Panel: Dotson, Hunter, Zimmerman (August 1983).

September 1983 to December 1983. 4-month delay without a preliminary decision while staff attorney assigned to case is processing cases of



---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

departed Board member Jenkins (August 1983) and while new panel members review hearing record (9,674 pages).

December 1983. Dotson subpanel meets and reaches a preliminary decision. Stage I ends. Dotson's staff attorney begins drafting decision. Stage II begins.

December 1983 to Fall 1984. 11-month delay while Dotson staff attorney completes draft decision, then rewrites decision when Dotson decides not to circulate draft. Stage II continues.

December 1984. Dotson panel member, Zimmerman, departs NLRB.

Panel: Dotson, Hunter, Dennis (November 1984).

December 1984 to March 1985. 3-month delay while new panel member reviews extensive record.

March 1985. Dotson subpanel meets to discuss draft decision and legal issues in case. Case returns to Stage I. Subpanel unable to reach a decision over legal issues in case.

March 1985 to April 1987. 24-month delay without any action on the case. Significant Board-member turnover and vacancies occur. Members' Hunter and Dennis terms expired in 1985 and 1986, respectively. Three new members' terms start in 1985 and one other member's term starts in 1986. Dotson's Deputy Chief Counsel reassigns staff attorney on case (September 1986).

Panels: Dotson, Babson, Dennis (July 1985).

Dotson, Babson, Stephens (March 1986).

Stephens, Babson, Dotson (April 1987).

April 1987. Stephens' subpanel reaches preliminary decision. Stage I ends. Dotson's representative reserves vote on certain issues. Stephens' staff attorney begins drafting decision. Stage II begins.

April 1987 to August 1987. 4-month delay while Stephens' staff attorney drafts the Board decision. Stage II ends.

August 1987. Stephens circulates draft Board decision. Stage III begins.

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

September 1987. Dotson requests a substitute to take his position as participating member.

Panel: Stephens, Babson, Johansen (September 1987).

Stage III ends. NLRB issues Supplemental Decision 286 NLRB No. 11 affirming in part and revising in part the ALJ Supplemental Decisions (August 25 and September 25, 1981) in favor of the complainant, Local 525.

---

---

## Case 6

---

### Name

E.I. du Pont de Nemours & Co. and Walter J. Slaughter (4-CA-9821-R).

---

### Issue

Did the respondent violate section 8(a)(1) by (1) refusing the complainant's request for a "witness" at an interview that he had reason to believe would result in disciplinary action and then (2) discharging him for refusing to be interviewed without a witness? (The issue was whether employees who are unrepresented by a union are entitled to the presence of a co-employee during an investigatory interview.)

---

### Timeframe Summary

The complainant filed a charge in December 1978. The Board first decided this case in July 1982; reversed the decision in March 1985 following a May 1984 remand from a U.S. Court of Appeals; and received its 1985 decision on another remand from a U.S. Court of Appeals in June 1986. (Four years elapsed after the 1982 decision before a second remand returned the case to the Board.) The second remand was assigned to a Board member in November 1986. NLRB issued its decision in June 1988. A period of 1 year and 7 months elapsed at headquarters to decide the second remand. A total period of 9 years and 6 months elapsed from filing to final Board decision.

---

### Key Events

December 1978. Complainant Walter J. Slaughter files unfair labor practice charge against respondent, E.I. du Pont de Nemours & Co.

August 1980. ALJ issues decision in favor of complainant.

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

July 1982. Board issues Decision and Order (262 NLRB No. 123) adopting ALJ's decision.

May 1984. After respondent appeals, U.S. Court of Appeals remands the case to the Board.

March 1985. Board issues Supplemental Decision and Order (274 NLRB No. 1104) reversing its July 1982 decision and dismissing complaint.

June 1986. After complainant appeals, U.S. Court of Appeals remands case to the Board.

November 1986. Upon receipt of position statements from the parties, NLRB Executive Secretary assigns case to member Stephens. Stage I begins.

Panel: Stephens, Dotson, Johansen (November 1986).

December 1986. Stephens holds a pre-subpanel meeting with his staff, decides that the matter should be decided by the full Board, and requests that the case be scheduled for Full Board Agenda.

Panel: Stephens, Dotson, Cracraft (December 1986).

February 1987. Full Board Agenda reaches preliminary decision. Stage I ends. Staff attorney begins drafting decision. Stage II begins.

March 1987. Staff attorney submits first draft to supervisor for review.

April 1987. Supervisor submits first draft to Deputy Chief Counsel for review.

April 1987 to March 1988. 11-month delay while the draft remains in the Chief Counsel's office.

Panels: Stephens, Johansen, Babson (November 1987).  
Stephens, Johansen, Cracraft (January 1988).

March 1988. Stephens circulates first draft. Stage II ends. Full Board Agenda discusses case. Case returns to Stage I. Full Board Agenda reaches decision. Stage I ends. Stage II begins.

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

---

May 1988. Stephens circulates second draft. Stage II ends, Stage III begins. Members review, revise, and approve draft.

June 1988. Board issues Second Supplemental Decision and Order (289 NLRB No. 81) dismissing complaint.

---

---

## Case 7

---

Name	Case name and case number are not listed because case was still pending as of September 30, 1989.
------	---

---

Issue	Did the employer violate sections 8(a)(1) and 8(a)(3) and engage in surface bargaining in violation of section 8(a)(5)?
-------	---

---

Timeframe Summary	The complainant filed a charge in January 1981. The case was assigned to a Board member in June 1984. The case was still pending on September 30, 1989, at headquarters. A total period of 8 years and 8 months elapsed from filing through September 30, 1989.
-------------------	---

---

Key Events	<u>January 1981.</u> Complainant files unfair labor practice charges against respondent.
------------	--

March 1984. ALJ issues decision in favor of complainant.

April 1984. Respondent contests ALJ decision.

June 1984. Executive Secretary (NLRB headquarters) assigns case to member Zimmerman. Stage I begins.

Panel: Zimmerman, Dennis, Hunter (June 1984).

June 1984 to July 1984. 1-month delay while Office of General Counsel (NLRB headquarters) and respondent file answering briefs to complainant's cross-exceptions.

August 1984 to October 1984. 3-month delay while member Zimmerman's staff attorney researches existing board policy, analyzes

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

hearing transcript (12,729 pages), and makes modifications to the ALJ decision.

October 1984. Zimmerman's subpanel meets and reaches preliminary decision. Stage I ends. Zimmerman's staff attorney begins drafting decision. Stage II begins.

November 1984 to December 1984. 2-month delay while Zimmerman's staff attorney processes cases of departing member Zimmerman, and awaits possible settlement in this case.

Panel: Hunter, Dennis, Dotson (November 1984).

December 1984. Zimmerman departs the Board. Executive Secretary assigns former member Zimmerman staff to member Hunter. Board consists of only three members (Hunter, Dennis and Dotson).

December 1984 to January 1985. 1-month delay while member Hunter decides to return case to subpanel for further discussion of legal issues. Case returns to subpanel in January 1985. Hunter's staff attorney discontinues drafting decision. Stage II ends, and Stage I begins.

January 1985 to November 1985. 11-month delay while case awaits return to subpanel. Board-member turnover and vacancies occur. Johansen's, Babson's, and Stephens' terms begin in May, July, and November 1985, respectively. Executive Secretary details member Hunter's (Zimmerman) staff to member Dotson in July. Panel member Hunter's term expires in August 1985. Executive Secretary requests two members to substitute for departed members Hunter and Zimmerman.

Panel: Dotson, Babson, Johansen (July 1985).

November 1985. Executive Secretary permanently assigns former member Hunter's (Zimmerman) staff to Dotson. Dotson becomes the originating member on case.

December 1985. Executive Secretary requests member Stephens to substitute on case. Executive Secretary assigns Dotson's staff to member Stephens.

Panel: Dotson, Stephens, Johansen (November 1985).

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

December 1985 to March 1986. 4-month delay while case awaits return to subpanel.

March 1986. Dotson's staff attorney prepares explanatory memorandum (21 pages) on case legal issues for member Stephens.

April 1986. Dotson's subpanel reaches a preliminary decision. Stage I ends. Dotson's staff attorney begins drafting decision. Stage II begins.

April 1986 to May 1987. 13-month delay while Dotson's staff attorney prepares draft decision and submits draft to supervisory attorney for review. (Staff attorney on detail to NLRB Solicitor's Office for 3 months.)

May 1987 to May 1988. 12-month delay while Dotson's supervisory attorney begins review of draft decision and Board reaches a final decision in Reichhold Chemicals, Inc., on remand from the Circuit Court of Appeals. Dotson's term expires in December 1987; panel consists of only two members. Babson agrees to substitute for departing member Dotson. Executive Secretary details former member Dotson's staff to Stephens in January 1988. Case returns to Stage I.

Panels: Stephens, Johansen, Babson (November 1987).  
Stephens, Johansen, Cracraft (January 1988).

May 1988. Stephens' subpanel reaches a preliminary decision. Stage I ends. Stephens' (Dotson's) staff attorney begins revising May 1987 draft decision. Stage II begins. Board issues Reichhold Chemicals, Inc. (288 NLRB No. 8).

May 1988 to June 1988. 1-month period while staff attorney revises prior draft decision.

June 1988 to March 1989. 9-month delay while Stephens' supervisory attorney reviews, revises, and approves draft decision. Board-member turnover and vacancies occur. Babson's term expires in July, Higgins' term begins in August 1988. Board consists of only two members (Stephens and Johansen) who can participate in the case. (Members Cracraft and Higgins cannot participate because of conflicts of interest.) Member Devaney begins term in November 1988.

Panels: Higgins, Johansen, Cracraft (August 1988).  
Stephens, Johansen, Higgins (September 1988).  
Stephens, Devaney, Higgins (January 1989).

---

**Appendix V**  
**Examples of Delays in Selected Cases That**  
**Took More Than 2 Years to Decide**

---

March 1989 to September 1989. 5-month delay while Stephens reviews and staff revises draft decision. Johansen's term expires in June 1989. Only two members on Board are available to participate in case (Stephens and Devaney).

September 1989. Stephens circulates draft decision to the only other available participating member (Devaney). Stage II ends, and Stage III begins. Board ices case awaiting arrival of a new Board member.

# Data Points for Figures

**Table VI.1: Data for Figure I.1, Median Time to Decide Contested Cases**  
(Fiscal Years 1960-89)

Fiscal years	Median time (days)	
	Unfair labor practice cases	Representation cases
1960	149	54
1961	177	65
1962	153	114
1963	119	108
1964	124	116
1965	122	107
1966	112	116
1967	128	135
1968	120	128
1969	123	138
1970	124	139
1971	141	152
1972	116	148
1973	133	147
1974	131	144
1975	134	137
1976	120	138
1977	134	176
1978	128	167
1979	123	170
1980	133	187
1981	120	209
1982	170	313
1983	324	250
1984	296	249
1985	273	190
1986	293	256
1987	315	253
1988	395	233
1989	300	212



Appendix VI  
Data Points for Figures

**Table VI.2: Data for Figure I.3, Cases  
Assigned During Year and Cases  
Pending at Year End (Fiscal Years 1973-89)**

Fiscal years	Number of cases	
	Assigned during fiscal year	Pending at fiscal year end
1973	1,489	449
1974	1,395	324
1975	1,625	535
1976	1,597	454
1977	1,684	518
1978	1,676	432
1979	1,856	468
1980	1,875	474
1981	1,858	806
1982	1,490	788
1983	1,349	1,336
1984	1,289	1,313
1985	1,090	1,196
1986	923	851
1987	881	692
1988	872	593
1989	874	437

# Comments From the National Labor Relations Board



**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD**

Washington, D.C. 20570

October 19, 1990

Mr. Franklin Frazier  
Director, Education and Employment Issues  
Human Resources Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Frazier:

This is in response to your letter of September 18, 1990, transmitting for our review and comment the Draft Report to the Subcommittee on Employment and Housing of the House Government Operations Committee, concerning the National Labor Relations Board's system for deciding cases.

The Board welcomed GAO's study and, as you know, gave complete cooperation to you and your staff throughout the nearly two years it has taken to complete your inquiry. To facilitate GAO's understanding of the Board's complex and tightly interlocked decisionmaking processes, we gave GAO complete access to the Board's closed- and pending-case database and case files and made available for interview any Board Members and Board staff requested by GAO. Combined with the thorough study by your very competent staff, the result has been a perceptive report for which we commend you.

It is, of course, too early to evaluate the final impact of the Draft Report's recommendations on action needed to improve case-processing time at the five-Member Board. The Board believes that GAO has provided the Subcommittee and the Board with important insights into the Board's decisionmaking process. They may be summarized as follows: First, the Draft Report confirms that Board Member turnover and Board vacancies have had a disruptive impact on the decisionmaking process. Second, the Draft Report confirms that the Board has made progress over the last several years in reducing both the backlog and the median time for disposing of cases. Third, GAO suggests - and the Board agrees - that there is still room for improvement in managing the flow of cases at the Board.

The Board believes that throughout the Draft Report GAO places too much emphasis on what it refers to as the lack of standards and procedures for preventing excessive delay and lack of timely decisions on major-issue cases, as independent contributing factors to delays at the Board in the 1980's. There is an apparent tension between these conclusions, and the repeated references by GAO to the median times of the 1960's and 1970's which the Draft Report notes with approval; they were produced by the same case-monitoring system as is employed today, only then there were not the disruptions of frequent Board Member turnover and extended vacancies. It is abundantly clear from the Draft Report that these disruptions, beginning in 1980-81, began a chain reaction that culminated in a record backlog of

**Appendix VII  
Comments From the National Labor  
Relations Board**

cases in 1984 from which the Board is only now extricating itself. The primary victims of the backlog were the effectiveness of the Board's management system and delayed decisions on major-issue cases. As the Draft Report notes, Board Member turnover was the highest in Agency history during the period of the study and continued to affect case processing even after the backlog was no longer a problem.

Although not specifically highlighted in the Draft Report, it is useful to note one factor which contributed to the aging of cases at the Board. The Report suggests that there was a tendency of the Board during FY 83 to FY 85 to concentrate on deciding the newer cases coming to the Board, rather than concentrating on what were then older cases. This resulted in a lowering of the median time for deciding contested cases from 300 days to 207 days. Once the Board began addressing more diligently the older, more complex cases from FY 1986 onward (including those left undecided during FY 1983 through FY 1985), the median time unavoidably rose until it peaked in 1988 at 329 days.

Although the Board was at less than full strength almost two-thirds of the time in the 1980's, the Draft Report discusses the Board's recent achievements in reducing both the backlog and median times from the unacceptable peaks of the mid-80's. The Board's median time for all contested unfair labor practice decisions has been steadily decreasing: in FY 1988, the median days from assignment to issuance of decision was 207 days; in FY 1989, 173 days; and the preliminary figures for FY 1990 show 126 days. The Board, now at full strength, has just embarked on a period of stability in Board Membership and is therefore in an excellent position to take full advantage of GAO's recommendations.

The Board has had preliminary discussions concerning the findings and recommendations of the Draft Report. In addition to its present case-management procedures, the Board believes that incorporation of an outside limit of two years for issuing a decision, as suggested by GAO, is a useful benchmark. The Board would like to see that time frame reduced further, of course, as the case load allows. Obviously, a case presenting particular difficulties should trigger Board attention well before its second anniversary. For that reason the Board has decided to add a new component to its case-management system. It has established what might be described as a "6-6-6 trigger" for directly involving all the Board Members in matters that may be emerging as problem cases requiring special attention. Of course, the participating Panel Members, and particularly the originating Board Member, have already been directly involved in the first two decision stages of the case from the time it was assigned. But if the Board's case-management system has not moved a case from one stage to the next in six months' time, it will be flagged for action by all the Board Members. The particular procedures for implementing this system in each of the three decisional stages, and the corrective actions to be taken, are now being worked out.

-2-

Appendix VII  
Comments From the National Labor  
Relations Board

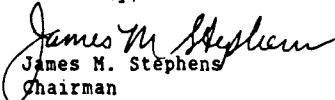
The Board expects that under this new augmented system there will soon be no case remaining at the Board beyond two years. It is a goal which, we think, is achievable in Fiscal Year 1991. The backlog has been reduced from 1647 cases in February 1984 to 459 today. The current state of the backlog, which includes 27 cases more than two years old (down from 300 in 1987), and another 20 cases which will have been at the Board two years by March 31, 1991, makes this a reasonable goal. The Board Members are examining each of these 47 cases in order to develop a decisional strategy for getting most, if not all, issued by that mid-fiscal-year date.

The Board is considering a range of other actions, including those recommended by GAO, and is continuing other improvements of recent years, to eliminate delay at the Board level: more frequent meetings of Board Members have been held and have been scheduled for six months in advance; there will continue to be special meetings to focus on the oldest cases; there has been renewed emphasis on Board Members' use of case-monitoring reports (including a new one - the "Ten Most Wanted" list); there has been renewed emphasis on the use of special expedited procedures for routine cases; and a new procedure was instituted for expediting summary-judgment cases.

GAO's additional recommendation, that Congress consider whether it wishes to amend the National Labor Relations Act to allow a Member whose term is ending either to (1) stay at the Board until a replacement is confirmed or (2) continue for a limited period of time while a replacement is being sought, is, of course, a matter for Congress to decide. Factors to be considered, however, might include that a given Member may wish to leave promptly at the conclusion of his or her term; that the presence of a sitting Member may alleviate the pressure to nominate a replacement, or lead to a delay in confirmation of a replacement; and that the uncertainty attendant upon changing composition of the Board could lead once again to a buildup in cases.

The GAO Draft Report has prompted stimulating discussion and review by the Board of its case-management system and of GAO's recommendations for improvement. We appreciate the assistance provided by yourself and by Carlotta Young, Dennis Gehley, Linda Stokes, Regina Santucci, Michael O'Dell, and Elsie Picyk in our continuing efforts to expedite the decisional processes of the National Labor Relations Board.

Sincerely,

  
James M. Stephens  
Chairman

---

# Major Contributors to This Report

---

## Human Resources Division, Washington, D.C.

Carlotta J. Young, Assistant Director, (202) 523-8701  
John T. Carney, Assignment Manager  
Dennis M. Gehley, Evaluator-in-Charge  
Linda W. Stokes, Senior Evaluator  
Joanne R. Frankel, Senior Social Science Analyst  
Michael O'Dell, Senior Social Science Analyst  
Kevin B. Dooley, Senior Evaluator, Computer Science  
Elsie A. M. Picyk, Senior Evaluator, Computer Science  
Joyce W. Smith, Secretary

# Glossary

<b>Draft-in-Lieu</b>	A proposed short-form decision adopting the decision of the administrative law judge or Regional Director.
<b>Full Board Agenda</b>	All Board members, meeting usually to consider cases that (1) present new and unusual issues or (2) require interpretations for which there is no existing Board precedent and/or policy.
<b>Full Board Subpanel</b>	Representatives of all Board members, meeting to decide cases with special circumstances not resolved by a subpanel or panel.
<b>Originating Member</b>	The Board member assigned to the case by the Office of the Executive Secretary and responsible for analyzing case issues, drafting the Board decision, and coordinating the views of other Board members participating in the decision.
<b>Originating Staff Counsel</b>	An originating member's staff attorney who reads the case record, exceptions and briefs; researches applicable Board policy and related cases; and drafts and conforms the Board decision to reflect Board members' input to the circulated draft.
<b>Panel</b>	Three members of the Board who review and decide cases assigned to the Board. The Board, for decision-making purposes, is comprised of five panels, each chaired by an originating Board member.
<b>Participating Member</b>	A Board member who is assigned to an originating member's panel and participates in deciding cases assigned to the originating member or considered by the full Board.
<b>Speed Team</b>	A group of staff attorneys who quickly process certain cases with issues determined to be already covered by board precedent.
<b>Subpanel</b>	A group consisting of the originating staff counsel and a representative of each of the three Board members on the panel deciding the case. The subpanel expresses a tentative position for the Board members on the issues in the case.







# Related GAO Products

---

Occupational Safety and Health: Inspectors' Opinions on Improving OSHA Effectiveness (GAO/HRD-91-9FS, Nov. 14, 1990).

Action Needed to Improve Case Processing Time at National Labor Relations Board Headquarters (GAO/T-HRD-91-1, Oct. 3, 1990).

Occupational Safety and Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

Trends in the Number of Strikes and Use of Permanent Strike Replacements in the 1980s (GAO/T-HRD-90-34, June 6, 1990) and (GAO/T-HRD-90-41, June 13, 1990).

Child Labor: Increases in Detected Child Labor Violations Throughout the United States (GAO/HRD-90-116, Apr. 30, 1990).

Child Labor Violations and Sweatshops in the U.S. (GAO/T-HRD-90-18, Mar. 16, 1990).

How Well Does OSHA Protect Workers From Reprisal: Inspector Opinions (GAO/T-HRD-90-8, Nov. 16, 1989).

"Sweatshops" in the U.S.: Opinions on Their Extent and Possible Enforcement Options (GAO/HRD-88-130BR, Aug. 30, 1989).

Concerns Regarding Impact of Employee Charges Against Employers for Unfair Labor Practices (GAO/HRD-28-80, June 21, 1982).